BADAN PEGUAM MALAYSIA

v.

LOUIS EDWARD VAN BUERLE

COURT OF APPEAL, PUTRAJAYA
DENIS ONG JCA
ABDUL AZIZ MOHAMAD JCA
JAMES FOONG JCA
[CIVIL APPEAL NO: W-02-568-2005]
19 OCTOBER 2005

LEGAL PROFESSION: *Malaysian Bar - Quorum for holding of Annual General Meeting - Whether formula for quorum prescribed by s. 67(1) Legal Profession Act 1976 applies to an annual general meeting as it applies to other general meetings - Whether term 'general meeting' includes an annual general meeting - Whether some indefinite number of members present is quorum of an annual general meeting*

LEGAL PROFESSION: *Malaysian Bar - Constitution, rights and powers of Malaysian Bar - Whether Malaysian Bar is a corporation aggregate or a corporation sole*

STATUTORY INTERPRETATION: *Construction of statutes - Purposive approach - Situation where s. 17A Interpretation Acts 1948 and 1967 which calls for adoption of purposive approach in interpretation of statutes may apply*

STATUTORY INTERPRETATION: *Duty of court - Court to give effect to statute regardless of consequences - Whether purposive approach can be used to prevent a calamity that is conceived will result from interpretation of a provision in a certain way*

STATUTORY INTERPRETATION: *Aids to construction - Headings in act and marginal notes - Whether headings and marginal notes may be used as an aid to statutory interpretation*

The appellant, a body corporate established under s. 41 of the Legal Profession Act 1976 ('the Act') is a professional body whose members consist of advocates and solicitors in practice in West Malaysia. Currently, it has a total membership of 11,755. The respondent is a member of the appellant. On 19 March 2005 at the Grand Ballroom, Nikko Hotel, the appellant held its 59th AGM at which 1,152 members attended. The respondent was one of them.

Raising a point of order at the commencement of the meeting, someone in the assembly queried the President of the appellant if there was a quorum for the meeting. The President replied that the Bar Council had already decided on the issue and that he was proceeding with the meeting although it had no quorum. The respondent along with some others walked out of the assembly. The 59th AGM went ahead.

On 4 April 2005, the respondent filed an application by way of originating summons in the High Court at Kuala Lumpur seeking the following reliefs namely: (a) a declaration that the 59th AGM of the Malaysian Bar for the year 2004/2005 held on 19 March 2005 at Nikko Hotel is invalid and be set aside; (b) a declaration that the decisions and resolutions passed at the 59th AGM be declared invalid and be set aside; (c) a declaration that the election of the principal office bearers of the Bar Council be deemed void and be set aside; and (d) an order that the outgoing Bar Council for the year 2004/2005 and/or the new members of the Bar Council elected for the year 2005/2006 convene a new AGM within 30 days from the date the High Court grants the plaintiff's application to conduct the business of the Malaysian Bar as provided under the Act.

The High Court declared the meeting to be null and void for lack of quorum. In the result the High Court granted the application of the respondent and ordered in terms of reliefs (a), (b), (c) and (d) of the originating summons. The learned judge held, on the basis of s. 67(1) of the Act, that the meeting required the presence of one-fifth of the total number of members of the Bar to constitute a quorum, which it did not have, because the total number of members then was 11,755 and one-fifth would be 2,351, but only 1,152 members were present. The Bar appealed. The particular points of law raised in this appeal were: (a) whether an annual general meeting or other general meeting involves the attendance and participation of all or nearly all members or does not; (b) whether the formula for the quorum namely, 1/5 X total number of members of the Malaysian Bar personally present or more prescribed by s. 67(1) applies to an annual general meeting as it applies to other general meetings or not; and if it does not apply, (c) whether some indefinite number of members present is the quorum of an annual general meeting.

Held (dismissing the appeal)
Per Denis Ong Jiew Fook JCA:

[1] The Malaysian Bar is a body corporate established under s. 41 of the Act with perpetual succession and a common seal. It is empowered to sue and be sued in its corporate name, to acquire and dispose of property and to do and perform such other acts as bodies corporate may by law perform. By ss. 43 and 44 of the Act, every practising advocate and solicitor so long as he has a current practising certificate issued under s. 32 and is not in arrears with his subscription under s. 46, is automatically a member of the Malaysian Bar and is eligible to attend and vote at any general meeting of the Bar. Having regard to its corporate structure, it is a corporation aggregate, not a corporation sole, in the law of corporations and all its members are corporators. (p 488 a-d)

[2] Meetings of members are required for the transaction of the business of the Malaysian Bar with reference to the many purposes professed in s. 42 of the Act. Meetings have to be called or convened by the Bar Council, validly held and proceedings thereat properly conducted or regulated by the chairperson by observing the procedures laid down in the Act. Otherwise, such meetings are *ultra vires* and a nullity. (p 489 c-d)

[3] The term "general meeting" means a meeting open to all or almost all members of the Malaysian Bar. The words "general meeting" within the term "annual general meeting" bears the same meaning. The function of the adjective "annual" in "annual general meeting" is to describe that this particular general meeting is convened yearly. Thus, an annual general meeting is a general meeting within the meaning of that term in s. 67 of the Act. (p 491 b-c)

[4] The essential character of a general meeting is the attendance and participation of all members or almost all members of the Malaysian Bar. That is the determining factor of whether a meeting is a general meeting or not. (p 492 f)

[5] It must be assumed that Parliament was not uninformed of the meaning of "general meeting" or of the full implication and effect of an increase in the quorum and the votes required for a valid decision-making process of the Malaysian Bar by the amendment to s. 67. That was the will of Parliament by the amendment to s. 67 introduced by the Legal Profession (Amendment) Act 1978 (Act A 419) and it is the function of the court to give effect to it as expressed in the amended s. 67. It is not the

business of the court to seek to distinguish an annual general meeting from a general meeting or to speculate what other intention that Parliament had or might not have had when passing such an amendment such as, to disturb only other general meetings under s. 65(1) but not annual general meetings under s. 64(1) and then to resort to the purposive approach provided in s. 17A of the Interpretation Acts 1948 and 1967 (Act 388) in order to exclude an annual general meeting from the application of s. 67 and limiting it only to other general meetings. (p 493 e-g)

[6] The Malaysian Bar is expressly empowered to substitute a greater number for the quorum fixed by s. 67(1) but not a smaller number. The latter is prohibited by the principle of *ultra vires.* (p 493 e-g)

[7] Since the quorum was not present, the 59th AGM ought to have been dissolved by the chairperson and no business transacted in compliance with the express prohibition in s. 67(2) and (1). As the 59th AGM in fact went ahead contrary to such prohibition, it was clearly *ultra vires* and a nullity. (p 494 h)

Per Abdul Aziz Mohamad JCA:

[1] The Act, however, provides not only for the annual general meetings of the Bar but also for other general meetings of the Bar. The learned judge correctly construed a general meeting to refer also to, or include, an annual general meeting. On that view, the Bar's appeal should be dismissed. (pp 495 f & 497 e)

[2] By the inevitable logic of language, "general meeting" is a generic term and any variety of general meeting has to be a general meeting. General meeting is the genus and annual general meeting is a species. The genus includes the species. The position is so inevitable that it does not require law to lay it down. (p 497 h)

[3] It is clear from ss. 64 to 67 that in those sections Parliament intended to deal with all types of general meetings. It chose the term "general meeting" when it intended to refer to all types of general meetings, including the annual general meeting, but used appropriate words when it intended to exclude an annual general meeting, and it used the words "annual general meeting" when it intended the provision to apply only to an annual general meeting. (p 498 a-b)

[4] By the genus-species logic, s. 67(1), which specifies the quorum, applies to all general meetings, including an annual general meeting, because there is no exclusion of an annual general meeting. (p 502 b)

[5] Section 17A of the Interpretation Acts 1948 and 1967, which calls for the adoption of the purposive approach in the interpretation of statutes did not apply in this case. It is clear from the very wording of the section that it is intended to apply where the interpretation of a provision of an Act yields two contending constructions, one that would promote the purpose or object underlying the Act and one that would not, and it is not possible, using the traditional rules of construction, to determine which construction was intended by the legislature. Then the court should choose the construction that would promote the purpose or object of the Act. The rule does not apply where, using the traditional rules of construction, the provision or word in question appears to the court to be capable of only one construction. (p 504 g-h)

[6] In this case the provision that calls for interpretation is s. 67(1), specifically the words "general meeting" in the subsection, which appear elsewhere in the other sections. The question is whether it includes an annual general meeting. It was clear that "general meeting" must include an annual general meeting. Therefore an annual general meeting requires the quorum prescribed in the subsection. Whatever may be the consequences of that, the purposive approach exhorted by s. 17A cannot be applied. (p 505 a-b)

[7] The purposive approach cannot be used to prevent a calamity that is conceived will result from the interpretation of a provision in a certain way where the construction is clear. It cannot be used to change the clear intention of the legislature. The remedy or prevention lies with the legislature, not with the courts. (p 505 d)

[8] The Bar failed to show that the opinion of the learned judge of the High Court that the quorum for their annual general meeting is the quorum prescribed in s. 67(1) was erroneous. (p 509 g)

Per James Foong JCA:

[1] The modern approach is to accept marginal notes as an aid to statutory interpretation when, previously, it was taboo to do so. Though marginal notes can be used as a guide but one must not forget that it is only a sub-signpost in the Act. There is a main sign in the form of a general heading. Similar to marginal notes, this general heading, which is the overall signpost, can also be called on to assist in the interpretation of a statute. The general heading has these words printed: "General meeting of the Malaysian Bar". The words "General meeting" here must be considered to mean both annual general meetings and general meetings since these two types of meetings are described under ss. 64 to 67 of the Act where these provisions are encapsulate under this general heading. Except where there is an explicit declaration to exempt its use to annual general meeting with the phrase "other than annual general meeting", as can be seen in ss. 65 and 66 of the Act, then the term general meeting used under all sections of the general heading must include both annual general meetings and general meetings. (p 515 a & f-g)

[2] In s. 67(1), the words "general meeting" has no qualification. And with the use of the general heading and the marginal notes as guides, the interpretation of "general meeting" here must include both annual general meeting and general meeting. (p 516 c)

[3] All that the law requires is for the Bar Council to call for a legally constituted annual general meeting. For this, a quorum of one-fifth of the members of the Malaysian Bar present at such meeting is required under s. 67(1) of the Act. If such a quorum were not achieved then the meeting would stand adjourned. If at all there is a need to amend the law, the court is not the forum to undertake such task; the august body of Parliament is. (pp 519 g & 520 a)

*[**Bahasa Malaysia** Translation Of Headnotes*

Perayu, sebuah perbadanan yang ditubuhkan di bawah s. 41 Akta Profesion Undang-Undang 1976 ('Akta') adalah satu badan profesional yang mana ahli-ahlinya adalah terdiri daripada peguamcara-peguamcara dan peguambela-peguambela yang beramal di Malaysia Timur. Pada masa ini, ia mempunyai keahlian seramai 11,755. Responden adalah seorang ahli dalam perayu. Pada 19 Mac 2005 di Grand Ballroom, Nikko Hotel, perayu telah mengadakan Mesyuarat Agung Tahunannya (MAT) yang ke 59 yang telah dihadiri oleh seramai 1,152 ahlinya. Responden adalah salah seorang daripada mereka.

Secara membangkitkan satu perkara aturan pada permulaan mesyuarat tersebut, salah seorang hadirin dalam mesyuarat itu telah menyoal Presiden perayu sama ada mesyuarat tersebut mempunyai kuorum yang mencukupi. Presiden telah menjawab bahawa Majlis Peguam telah membuat keputusan mengenai isu ini dan beliau akan meneruskan dengan mesyuarat tersebut walaupun tidak mempunyai kuorum yang mencukupi. Responden bersama-sama dengan beberapa ahli lain telah meninggalkan mesyuarat tersebut. MAT ke 59 tersebut telah diteruskan.

Pada 4 April 2005, responden telah memfailkan satu permohonan melalui satu saman pemula di Mahkamah Tinggi di Kuala Lumpur menuntut relif-relif yang berikut: (a) satu deklarasi bahawa MAT ke 59 Bar Malaysia untuk tahun 2004/2005 yang diadakan pada 19 Mac 2005 di Nikko Hotel adalah tidak sah dan harus diketepikan; (b) satu deklarasi bahawa keputusan-keputusan dan resolusi-resolusi yang telah diluluskan pada MAT ke 59 tersebut tidak sah dan diketepikan; (c) satu deklarasi bahawa pelantikan pemegang jawatan utama dalam Majlis Peguam disifatkan sebagai tak sah dan diketepikan; dan (d) satu perintah bahawa Majlis Peguam yang akan bersara untuk tahun 2004/2005 dan/atau ahli-ahli baru Majlis Peguam yang dilantik bagi tahun 2005/2006 mengadakan satu MAT baru dalam tempoh 30 hari dari tarikh Mahkamah Tinggi membenarkan permohonan plaintif supaya boleh mengendalikan urusan Bar Malaysia seperti yang diperuntukkan di dalam Akta.

Mahkamah Tinggi telah mendeklarasikan mesyuarat tersebut sebagai tak sah dan batal atas sebab tidak cukup kuorum. Akibatnya, Mahkamah Tinggi telah membenarkan permohonan responden dan memerintahkan relif-relif dalam terma-terma (a), (b), (c) dan (d) saman pemula tersebut. Hakim yang bijaksana telah memutuskan, atas dasar seksyen 67(1) Akta, bahawa mesyuarat tersebut telah memerlukan kehadiran satu per lima daripada jumlah ahli Bar untuk mewujudkan kuorum, yang mana tidak ditepati, kerana jumlah ahli pada masa itu ialah 11,755 dan satu per lima adalah 2,351, tetapi hanya 1,152 ahli yang telah hadir. Bar telah merayu. Perkara-perkara undang-undang yang telah dibangkitkan dalam rayuan ini ialah: (a) sama ada satu mesyuarat agung tahunan atau mesyuarat agung lain memerlukan kehadiran dan penyertaan kesemua atau hampir kesemua ahli atau tidak; (b) sama ada formula untuk kuorum iaitu, 1/5 X jumlah ahli Bar Malaysia hadir secara sendiri atau lebih sepertimana yang diperuntukkan oleh s. 67(1), terpakai kepada mesyuarat agung tahunan sepertimana yang ianya terpakai kepada mesyuarat agung lain atau tidak; dan sekiranya ianya tidak terpakai, (c) sama ada kehadiran satu jumlah ahli yang tidak ditetapkan boleh menjadi kuorum untuk satu mesyuarat agung tahunan.

Diputuskan (menolak rayuan):
Oleh Denis Ong HMR:

[1] Bar Malaysia adalah satu perbadanan yang ditubuhkan di bawah s. 41 Akta dengan perwarisan berkekalan dan meterai am. Ia diberikuasa untuk mendakwa dan membela dalam nama perbadanannya, untuk membeli dan menjual harta dan untuk mengambil mana-mana tindakan lain yang boleh diambil oleh mana-mana badan korporat secara sah di sisi undang-undang. Di bawah ss. 43 dan 44 Akta semua peguamcara dan peguambela yang beramal, dengan syarat mereka mempunyai sijil amalan semasa yang dikeluarkan di bawah s. 32 dan tidak mempunyai tunggakan bayaran yuran di bawah s. 46, adalah secara otomatik ahli Bar Malaysia dan berhak menghadiri dan mengundi dalam mana-mana mesyuarat agung Bar. Memandangkan struktur korporatnya, ia adalah satu perbadanan agregat dan bukan satu perbadanan seorang dalam undang-undang perbadanan dan kesemua ahlinya adalah pengusaha perbadanan.

[2] Mesyuarat ahli-ahli diperlukan untuk menjalankan urusniaga Bar Malaysia berkaitan dengan tujuan-tujuan yang dinyatakan dalam s. 42 Akta. Mesyuarat-mesyuarat perlu dipanggil atau diadakan oleh Majlis Peguam secara sah dan prosiding di dalamnya perlu dijalankan dengan betul atau terkawal oleh pengerusi dengan mematuhi prosedur-prosedur yang diperuntukkan di dalam Akta. Jika tidak, mesyuarat berkenaan adalah *ultra vires* and terbatal.

[3] Terma "mesyuarat agung" bermakna satu mesyuarat yang terbuka kepada semua atau hampir kesemua ahli Bar Malaysia. Perkataan "mesyuarat agung" dalam terma "mesyuarat agung tahunan" mempunyai maksud yang sama. Fungsi adjektif "tahunan" dalam "mesyuarat agung tahunan" adalah untuk menggambarkan bahawa mesyuarat agung ini khususnya diadakan setiap tahun. Oleh itu, mesyuarat agung tahunan adalah satu mesyuarat agung dalam maksud terma tersebut dalam s. 67 Akta.

[4] Keperibadian penting sesuatu mesyuarat agung itu ialah kehadiran dan penyertaan semua ahli atau hampir kesemua ahli Bar Malaysia. Inilah faktor penentuan sekiranya sesuatu mesyuarat itu adalah mesyuarat agung atau tidak.

[5] Perlu dianggap bahawa Parlimen bukannya tidak arif mengenai makna "mesyuarat agung" atau mengenai implikasi dan efek sepenuhnya lanjutan peningkatan kuorum dan undi yang diperlukan untuk proses pengambilan-keputusan yang sah untuk Bar Malaysia melalui pindaan kepada s. 67. Itulah niat Parlimen lanjutan pindaan kepada s. 67 yang dibawa oleh Akta

(Pindaan) Profesion Undang-Undang 1978 (Akta A 419) dan adalah fungsi mahkamah untuk memberikan efek kepadanya sepertimana yang dinyatakan di dalam pindaan kepada s. 67. Bukanlah tugas mahkamah untuk cuba membezakan satu mesyuarat agung tahunan daripada mesyuarat agung atau untuk meneka apakah niat lain yang dipunyai atau tidak dipunyai oleh Parlimen semasa meluluskan pindaan tersebut seperti, menggangu hanya mesyuarat agung lain di bawah s. 65(1) tetapi bukan mesyuarat agung tahunan di bawah s. 64(1) dan kemudiannya merujuk kepada pendekatan maksud yang diperuntukkan di dalam s. 17A Akta Penterjemahan 1948 and 1967 (Akta 388) bagi tujuan menyingkirkan mesyuarat agung tahunan daripada s. 67 dan menghadkannya hanya kepada mesyuarat agung lain.

[6] Bar Malaysia dengan nyatanya diberikuasa untuk menggantikan satu jumlah yang lebih besar untuk kuorum yang ditetapkan oleh s. 67(1) tetapi bukan satu jumlah yang lebih kecil. Yang terkemudian itu dihalang oleh prinsip *ultra vires.*

[7] Oleh kerana kuorum tidak dicapai, MAT ke 59 itu sepatutnya dibubarkan oleh pengerusi dan tiada urusan dijalankan sebagai mematuhi larangan nyata di dalam s. 67(2) dan (1). Oleh kerana MAT ke 59 itu telah diteruskan secara bercanggah dengan larangan tersebut, maka ianya dengan jelas *ultra vires* dan terbatal.

Oleh Abdul Aziz Mohamad HMR:

[1] Akta tersebut memperuntukkan bukan sahaja untuk mesyuarat agung tahunan Bar tetapi juga untuk mesyuarat agung Bar yang lain. Hakim yang bijaksana telah dengan betul mentafsirkan satu mesyuarat agung sebagai merujuk juga kepada, atau merangkumi, satu mesyuarat agung tahunan. Atas pandangan ini, rayuan Bar perlu ditolak.

[2] Mengikut logik bahasa yang tidak boleh dielak, "mesyuarat agung" adalah satu terma generik dan mana-mana jenis mesyuarat agung mestilah disifatkan sebagai satu mesyuarat agung. Mesyuarat agung adalah genus dan mesyuarat agung tahunan adalah satu golongan. Genus merangkumi golongannya. Keadaannya adalah begitu tidak boleh dielakkan sehingga ianya tidak memerlukan undang-undang untuk menentukannya.

[3] Adalah jelas daripada ss. 64 hingga 67 bahawa dalam seksyen-seksyen tersebut, Parlimen telah berniat untuk merangkumi semua jenis mesyuarat agung. Ia telah memilih terma "mesyuarat agung" apabila ia berniat merujuk kepada semua jenis mesyuarat agung, termasuk mesyuarat agung tahunan, tetapi menggunakan perkataan-perkataan yang sesuai apabila ia berniat untuk

menyisihkan mesyuarat agung tahunan, dan ia telah menggunakan perkataan "mesyuarat agung tahunan" apabila ia berniat peruntukkan tersebut dipakai hanya kepada satu mesyuarat agung tahunan.

[4] Di bawah logik genus-golongan, s. 67(1), yang memperincikan kuorum, terpakai kepada semua mesyuarat agung, termasuk mesyuarat agung tahunan, kerana mesyuarat agung tahunan tidak disingkirkan.

[5] Seksyen 17A Akta Penterjemahan 1948 dan 1967, yang memperuntukkan bagi penggunaan pendekatan maksud dalam penterjemahan Akta-Akta, tidak terpakai dalam kes ini. Adalah jelas daripada perkataan-perkataan yang digunakan dalam seksyen tersebut bahawa ianya dimaksudkan untuk dipakai di mana penterjemahan peruntukan sesuatu Akta itu memberikan dua tafsiran yang bertentangan, satu yang mana akan memajukan maksud atau objek Akta tersebut dan satu lagi yang tidak akan berbuat demikian, dan adalah mustahil, menggunakan kaedah-kaedah perterjemahan traditional, untuk mengenalpasti tafsiran yang mana yang diniatkan oleh badan perundangan. Baru mahkamah mesti memilih tafsiran yang akan memajukan maksud atau objek Akta tersebut. Kaedah tersebut tidak terpakai di mana, menggunakan kaedah-kaedah penterjemahan tradisional, mahkamah mendapati yang peruntukkan atau perkataan tersebut hanya sesuai diterjemahkan dalam satu tafsirkan sahaja.

[6] Dalam kes ini, peruntukkan yang perlu diterjemahkan ialah s. 67(1), secara khususnya perkataan "mesyuarat agung" dalam sub-seksyen tersebut, yang juga dirujuk di dalam lain-lain seksyen. Soalannya ialah sama ada ia merangkumi satu mesyuarat agung tahunan. Adalah jelas bahawa "mesyuarat agung" mesti merangkumi satu mesyuarat agung tahunan. Oleh itu, satu mesyuarat agung tahunan memerlukan kuorum yang diperuntukkan di dalam sub-seksyen tersebut. Apajua akibatnya, pendekatan maksud yang diperuntukkan oleh s. 17A tidak boleh digunakan.

[7] Pendekatan maksud tidak boleh digunakan untuk menghalang satu kecelakaan yang dijangka akan timbul daripada penterjemahan sesuatu peruntukkan itu dalam satu cara yang tertentu di mana tafsirannya adalah jelas. Ianya tidak boleh digunakan untuk mengubah niat badan perundangan. Remedi atau pencegahan adalah terpulang kepada badan perundangan, dan bukan pada mahkamah.

[8] Bar telah gagal menunjukkan bahawa keputusan hakim Mahkamah Tinggi yang bijaksana bahawa kuorum untuk mesyuarat agung tahunannya ialah kuorum yang diperuntukkan dalam s. 67(1) itu salah.

Oleh James Foong HMR:

[1] Pendekatan moden adalah untuk menerima nota birai sebagai satu bantuan untuk tafsiran statutori, manakala dahulunya ia adalah satu perbuatan terlarang untuk berbuat demikian. Walaupun nota birai boleh digunakan sebagai bantuan, tidak harus dilupakan bahawa ianya hanyalah satu sub-papan tanda di dalam Akta tersebut. Terdapat satu papan tanda utama dalam bentuk tajuk am. Sama seperti nota birai, tajuk am ini, yang merupakan papan tanda keseluruhan, boleh juga digunakan untuk membantu penterjemahan sesuatu akta. Tajuk am tersebut mempunyai perkataan berikut : "Mesyuarat Agung Bar Malaysia". Perkataan "Mesyuarat Agung" di sini mesti diambil sebagai memaksudkan kedua-dua mesyuarat agung tahunan dan mesyuarat agung oleh kerana kedua-dua jenis mesyuarat itu dihuraikan di dalam ss. 64 hingga 67 di mana peruntukkan-peruntukkan ini terkandung di bawah tajuk am itu. Kecuali di mana terdapat deklarasi secara nyata untuk menyingkirkan penggunaannya kepada mesyuarat agung tahunan dengan frasa "selain daripada mesyuarat agung tahunan", sepertimana yang dapat dilihat di dalam ss. 65 dan 66, terma mesyuarat agung yang digunakan di bawah semua seksyen yang terkandung di dalam tajuk am tersebut mesti merangkumi kedua-dua mesyuarat agung tahunan dan mesyuarat agung.

[2] Di dalam s. 67(1), perkataan "mesyuarat agung" tidak dihadkan. Dengan menggunakan tajuk am dan nota birai sebagai bantuan, penterjemahan "mesyuarat agung" di sini mesti merangkumi kedua-dua mesyuarat agung tahunan dan mesyuarat agung.

[3] Undang-undang memerlukan Majlis Peguam untuk mengadakan mesyuarat agung tahunan yang sah. Untuk tujuan ini, satu kuorum sebanyak satu per lima daripada ahli Bar Malaysia perlu hadir di mesyuarat tersebut sepertimana yang diperlukan di bawah s. 67(1). Sekiranya kuorum sedemikian tidak dicapai, mesyuarat tersebut perlu ditangguhkan. Sekiranya pun terdapat keperluan untuk meminda undang-undang tersebut, Mahkamah bukanlah forum untuk menjalankan tugas tersebut; Parlimen yang mulia adalah forum yang berkenaan.

Case(s) referred to:

Chai Siew Yin v. Leong Wee Shing [2004] 1 CLJ 752 CA

Fadzil Mohamed Noor v. Universiti Teknologi Malaysia [1981] 2 MLJ 196

Government of Malaysia v. Chong Woo Yit [1988] 2 MLJ 534

Harman v. Energy Research Group Australia Ltd; Davidson v. Energy Research Group Australia Ltd [1984-1985] 9 ACLR 897

Kerajaan Malaysia v. Wong Pot Heng & Anor [1997] 2 CLJ 188 FC

Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 272 FC

Public Textiles Bhd v. Lembaga Letrik Negara [1976] 2 MLJ 58

Re An Advocate [1964] 30 MLJ 1

Wong Pot Heng & Anor v. Zainal Abidin Putih & Anor [1990] 2 CLJ 174; [1990] 1 CLJ (Rep) 312 SC

Legislation referred to:

Companies Act 1965, s. 143(1)

Interpretation Acts 1948 and 1967, s. 17A

Legal Profession Act 1976, ss. 1(1), 32, 35(1), 41, 42, 43, 44, 46, 47, 52, 64(1), (2), 65(1), (2), (4), (5), 66, 67(1), (2), (3), 70(2), 70A(2), 88A

Legal Profession Act (Cap 161) 1978 [Sing], ss. 67, 68, 69, 70

Other source(s) referred to:

Concise Oxford Dictionary, 9th edn, p 50

Halsbury's Laws of England, 4th edn, reissue, vol 9(2), paras 1005, 1010

Shorter Oxford Dictionary, 3rd edn, p 1391

Sir Sebag Shaw & Judge E Dennis Smith, *The Law of Meetings*, 4th edn, 1974, pp 67, 68

For the appellant - Sulaiman Abdullah (Cecil Abrahim, Tommy Thomas, Robert Lazar & Sunil Abrahim with him); M/s Shearn Delamore & Co

For the respondent - Zainur Zakaria (V Arivanandan with him); M/s Cheong Wai Meng & Van Buerle

[Appeal from High Court, Kuala Lumpur; Originating Summons No: R1-17-5-2005]

Reported by Amutha Suppayah

JUDGMENT

Denis Ong JCA:

Introduction

This is an appeal by the Malaysian Bar, the above named plaintiff (the appellant) to this court from the judgment of the High Court in Kuala Lumpur dated 27 May 2005 which declared its 59th Annual General Meeting (59th AGM) for the year 2004/2005, held on 19 March 2005 null and void. In the judgment, the High court also made other orders consequential upon such declaration.

Facts And Background

The appellant, a body corporate established under s. 41 of the Legal Profession Act 1976 (Act 166) is a professional body whose members consist of advocates and solicitors in practice in West Malaysia. Currently, it has a total membership of 11,755.

The respondent is a member of the appellant. He practises as an advocate and solicitor under the firm name of M/s Cheong Wai Meng & Van Buerle (Advocates & Solicitors) with its head Office at 49 Beach Street, 10300 Penang. Currently, he holds an Annual Practising Certificate No. 46206 valid from 1 January 2005 to 31 December 2005 issued by the Registrar of the High Court in Malaya.

On 19 March 2005 at 10am at the Grand Ballroom, Nikko Hotel, the appellant held its 59th AGM at which 1,152 members attended. The respondent was one of them. Raising a point of order at the commencement of the meeting, someone in the assembly queried the President of the appellant if there was a quorum for the meeting. The President replied that the Bar Council had already decided on the issue and that he was proceeding with the meeting although it had no quorum. The respondent along with some others walked out of the assembly. The 59th AGM went ahead.

On 4 April 2005, the respondent filed an application by way of originating summons in the High Court at Kuala Lumpur seeking the following reliefs namely:

(a) a declaration that the 59th AGM of the Malaysian Bar for the year 2004/2005 held on Saturday, 19 March 2005 at Nikko Hotel is invalid and be set aside;

(b) a declaration that the decisions and resolutions passed at the 59th AGM be declared invalid and be set aside;

(c) a declaration that the election of the principal office bearers of the Bar Council be deemed void and be set aside; and

(d) an order that the outgoing Bar Council for the year 2004/2005 and/or the new members of the Bar Council elected for the year 2005/2006 convene a new AGM within 30 days from the date the High Court grants the plaintiff's application to conduct the business of the Malaysian Bar as provided under Act 166.

The originating summons was supported by an affidavit of the respondent affirmed on 1 April 2005 followed by three other affidavits in reply, one from the respondent and two from the appellant.

In The High Court

The principal issue as formulated by the High Court is whether s. 64 of Act 166 requires a quorum of one-fifth (1/5) of the total number of members of the Malaysian Bar to be present for business to be transacted at an AGM of the Malaysian Bar.

The reasoning and conclusion on the issue of law and the holding of the court appear from paras. 14 to 18 of the judgment. These paragraphs are reproduced below for easy reference.

> 14. With due respect, I am unable to subscribe to the submission of the defendant. I am of the view that the term general meeting of the Malaysian Bar refers to both the annual general meeting under s. 64 and the general meeting under s. 65. The fact that the meeting in s. 64 is termed as annual general meeting does not make it any less a general meeting. To borrow the words of Brinsden J in the case of *Harman v. Energy Research Group Australia Ltd.; Davidson v. Energy Research Group Australia Ltd.* [1985] 3 ACLR 538 that "There is no magic in the use of the word "general". If all the members meet, it seems to me that the meeting must be a general meeting, although at the same time, it may also be an extraordinary general meeting or an annual general meeting.
>
> 15. To me, no doubt, s. 64 by itself is silent on the quorum requirement, but it does not necessarily or automatically support the defendant's contention that a quorum is not necessary for an annual general meeting of the Malaysian Bar. This is because s. 64 is not self independent or self contained. It cannot be interpreted in isolation or independent of s. 65 and s. 67. This view is supported by the fact that s. 64, like s. 65 and 67 fall under the general heading which reads "General meeting of the Malaysian Bar" (emphasis added). Hence, to my mind the general meeting of the Malaysia Bar must encompass the annual general meeting under s. 64 and the general meeting under s. 65.
>
> 16. Further, I have difficulties in seeing the rationale and logic of the defendant's argument that Parliament must have intended to exclude the quorum requirement for an annual meeting of the Malaysian Bar. To my mind, to construe s. 64, giving it a literal construction, and thereby saying there is no quorum requirement for an annual general meeting of the Malaysian Bar, will lead to absurdity. This is because from the affidavit filed by the plaintiff in support of this application, the annual general meeting of the Malaysian Bar is not a mere routine statutory meeting. In fact, the businesses transacted at the annual general meeting are not confined to the tabling of the reports and accounts but often included important motions and resolutions which were extensively debated and passed. Such motions tabled at the annual general meeting must have come through s. 65(5) which allows any member of the Malaysian Bar to propose any motion to be considered at the annual or other general meeting. Thus, if the defendant's proposition that no quorum were required at the annual general meeting is correct, then there would be a situation that any motion proposed under s. 65(5) at a

general meeting will need a quorum as required by s. 67(1) to be debated and passed, whereas a similar motion if proposed at an annual general meeting will not need such quorum. Such situation is not only absurd but also illogical. Surely, it could not have been the intention of Parliament when amending s. 67(1) in 1978, by increasing the quorum to one-fifth of the total number of the Malaysian Bar to limit its application only to the general meeting of the Malaysian Bar under s. 65.

17. Thus, I am of the view, the quorum requirement of one-fifth of the total number of member of the Malaysian Bar under s. 67(1) applies to both s. 64 and s. 65. To my mind, the reason why no specific mention of the quorum for the annual general meeting of the Malaysian Bar as opposed to annual general meeting of the State Bar and general meeting of the State Bar, is because, the words 'general meeting' are used generically with respect to general meeting of the Malaysian Bar, whether the annual general meeting under s. 64 or the general meeting under s. 65.

18. In conclusion, my view is that there is a quorum requirement for an annual general meeting of the Malaysian Bar under s. 64 of the LPA. The quorum is one-fifth of the total number of members of the Malaysian Bar personally present as stated in s. 67(1) of the LPA. Currently, the membership of the Malaysian Bar is 11,755. The required one-fifth quorum is therefore 2,351. The members of the Malaysian Bar who personally were present at the 59th annual general meeting was only 1,152. Thus, the quorum was not present at the 59th annual general meeting of the Malaysian Bar. The absence of the quorum rendered the 59th annual general meeting completely abortive, null and void and all acts or decisions to have been done, taken or made at the 59th annual general meeting are accordingly nugatory and invalid.

In the result the High Court granted the application of the respondent and ordered in terms of reliefs (a), (b), (c) and (d) of the originating summons.

In The Court Of Appeal

Having regard to the facts and background outlined above and with particular reference to the reliefs sought, the question for determination in this appeal is whether the 59th AGM of the Malaysian Bar at the Hotel Nikko on 19 March 2005 was validly held notwithstanding a lack of quorum of sufficient members present at such meeting.

The Bar Council, established under s. 47 for the proper management and performance of the functions of the Malaysian Bar under Act 166, convenes an annual general meeting of all its members before 1 April of each year under s. 64(1) and general meeting at any time of the year it considers necessary or expedient under s. 65.

There is common ground between the parties that a quorum of one-fifth (1/5) of the total number of members of the Malaysian Bar personally present is required under s. 67(1) of Act 166 for holding a valid general meeting under s. 65(1). There is further common ground between them in that both sides agree that a quorum is required for a valid annual general meeting of the Malaysian Bar called under s. 64(1). The controversy between them is whether the same quorum of one-fifth (1/5) of the total number of members of the Malaysian Bar personally present is likewise required for a valid annual general meeting. The appellant's stand is that it is not required; so long as there are members of the Malaysian Bar present at the annual general meeting, those members constitute the quorum. In short, no number is fixed for the quorum. They submit that s. 67(1) does not apply to annual general meeting because:

(a) an annual general meeting is not a "general meeting" within the meaning of that term in s. 67(1);

(b) "general meeting" is s. 67(1) means a general meeting of the Malaysian Bar called under s. 65(1) and no other;

(c) s. 64 and s. 67 are independent of each other;

(d) there is thus a distinction between an annual general meeting and a general meeting of the Malaysian Bar; and

(e) it is not the intention of Parliament to disturb routine and annual businesses of the Malaysian Bar by stipulating a quorum requirement of one-fifth (1/5) of the total membership of the Malaysian Bar to be present at an annual general meeting.

The High Court, he said, had erred in not drawing a distinction between annual general meeting and general meeting. In the absence of a statutory provision for a quorum, the common law applies and the minimum number of members required to be present is two. In the case of the Malaysian Bar he says that so long as there are members present at the annual general meeting of the Malaysian Bar, they constitute the quorum and the meeting is valid. No number is fixed for the quorum.

Mr Zainur Zakaria, learned counsel for the respondent, on the other hand submits that "general meeting" is a generic term applicable to both annual general meeting convened under s. 64 and to other general meetings convened under s. 65, of the Malaysian Bar. Since they are both "general meetings" the quorum provision in s. 67 applies equally to annual general meeting as it applies to other general meetings so that it cannot be said in law that Act

166 is express on the requirement of a quorum for other general meetings but silent on such quorum requirement for annual general meeting and in that sense there is ambiguity. He identifies annual general meeting convened under s. 64 as a statutory meeting of the Malaysian Bar but not the other general meetings convened under s. 65. Thus he submits that the sub-heading namely, "General Meeting of the Malaysian Bar" is plain, clear and unambiguous.

It is apparent from their arguments that basically the issue between the two sides is whether an annual general meeting is a general meeting or not and the problem is one of language, in particular, the terms "general meeting", "annual general meeting" and the phrase "other than" and their meanings in the context of ss. 64, 65, 66 and 67 of Act 166.

At this juncture, it is convenient to reproduce the text of ss. 64, 65, 66 and 67 of Act 166 to which references will be made hereafter.

General meeting of the Malaysian Bar

Annual general meetings

64. (1) The Bar Council shall each year convene an annual general meeting of the Malaysian Bar to be held before the first day of April.

(2) The Bar Council shall cause to be prepared and presented to the annual general meeting:

(a) a report on the activities of the Malaysian Bar during its term of office;

(b) proper accounts, duly audited, of all funds, property and assets of the Malaysian Bar for the twelve months terminating on the 31 day of December immediately preceding such general meeting.

General meeting

65. (1) The Bar Council may convene a general meeting of the Malaysian Bar other than the annual general meeting at any time the Bar Council considers it necessary or expedient.

(2) Any fifty members of the Malaysian Bar may at any time requisition a general meeting by written notice in that behalf signed by them and served on the President, Vice-President or the Secretary of the Malaysian Bar; and the Bar Council shall convene a general meeting to be held within thirty days of such service.

(3) The written notice shall specify the object or objects of the proposed meeting.

(4) If the Bar Council fails to convene a general meeting in accordance with the requisition within thirty days of the service of such requisition, the requisition members may convene the general meeting within sixty days of such service.

(5) If any member of the Malaysian Bar desires to propose any motion to be considered at the annual or other general meeting to be convened under this section, he shall not less than seven days before the date of the meeting serve upon the Secretary of the Malaysian Bar notice of such motion in writing.

Voting

66. At every general meeting other than an annual general meeting, every member present shall have one vote and the Chairman of that meeting shall have a casting vote.

Quorum

67. (1) The quorum for a general meeting of the Malaysian Bar shall be one-fifth of the total number of members of the Malaysian Bar personally present or any greater number as shall be provided under any rules made pursuant to section 42(2)(d) and no business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.

(2) Any general meeting, whether convened on the requisition of members pursuant to section 65(2) or convened pursuant to section 65(4), shall be dissolved if a quorum is not present within half an hour from the time appointed for holding the meeting.

(3) Any question at a general meeting of the Malaysian Bar shall be decided by the votes of not less than two-thirds of the members present and voting.

It is essential to bear in mind that the Malaysian Bar is a body corporate and that these sections provide for the procedure for the calling, holding and conduct by the Bar Council of meetings of members of the Malaysian Bar as such body corporate.

Section 64(1) makes it obligatory on the part of the Bar Council to convene an annual general meeting of the Malaysian Bar before 1 April of each year. Section 64(2) prescribes matters of business to be prepared and presented to the annual general meeting namely:

(i) a report on the activities of the Malaysian Bar during the term of office of the Bar Council of that year: see s. 52.

(ii) audited accounts of all funds, property and assets of the Malaysian Bar for the 12 months terminating on 31 December immediately preceding such general meeting.

Section 65(1) provides for a general meeting of the Malaysian Bar other than the annual general meeting referred to in s. 64(1). Such a general meeting may be convened at any time by the Bar Council on its own initiative upon the exercise of its discretion based on grounds of necessity or expediency or upon requisition by any 50 members of the Malaysian Bar. Alternatively, under s. 65(4), it may be convened by the requisitioning members within 60 days of service of the requisition notice in writing by them on the Bar Council and the latter fails to so convene within 30 days of service.

The requisition notice must be in writing, signed by the requisitioning members and specifying the object or objects of the proposed general meeting and served upon the President, Vice-President or Secretary of the Malaysian Bar. The appointed dates for the general meeting convened by the Bar Council or by the requisitioning members as the case may be, must be within 30 or 60 days respectively of the service of such notice. These are provided in s. 65(2), (3) and (4) and are procedural in nature pertaining to the calling of the general meeting.

Section 65(5) enables a member of the Malaysian Bar to propose a motion for consideration at either the annual general meeting convened under s. 64(1) or the other general meeting under s. 65 provided written notice of such motion be given to the Secretary at least seven days in advance of the appointed date of such meeting.

Section 66 entitles every member present at every general meeting other than an annual general meeting to one vote each and the Chairman of that meeting, to a casting vote.

Section 67(1) fixes the quorum for a general meeting of the Malaysian Bar and that quorum is a figure arrived at by computation based on a simple formula prescribed in that subsection, namely, 1/5 X total number of members of the Malaysian Bar present.

It forbids any business to be transacted unless that quorum is present when the meeting proceeds to business.

Section 67(2) makes it obligatory upon the chairperson to dissolve any general meeting if the quorum is not present within half an hour from the time appointed for the meeting whether the general meeting is convened pursuant to s. 65(2) or (4) or not.

Section 67(3) makes it a statutory requirement that any question at a general meeting must be decided by the votes of at least 2/3 of the members present and voting.

The provision of s. 65(5), s. 66 and s. 67 are procedural and regulatory of the holding and conduct of proceeding of a general meeting.

The Malaysian Bar is a body corporate established under s. 41 of Act 166 with perpetual succession and a common seal. It is empowered to sue and be sued in its corporate name, to acquire and dispose of property and to do and perform such other acts as bodies corporate may by law perform.

By ss. 43 and 44 of Act 166 every practising advocate and solicitor so long as he has a current practising certificate issued under s. 32 and is not in arrears with his subscription under s. 46, is automatically a member of the Malaysian Bar and is eligible to attend and vote at any general meeting of the Bar.

Having regard to its corporate structure, it is a corporation aggregate, not a corporation sole, in the law of corporations and all its members are corporators: see *Halsbury's Laws of England,* 4th ed. (Reissue) Vol. 9(2) para 1005 and para 1010.

The *Concise Oxford Dictionary,* 9th ed at p. 50 gives the meaning of "annual general meeting" as a yearly meeting of members or shareholders, especially for holding elections and reporting on the year's events". It further, in the same page, gives the meaning of "annual" as occurring every year. At p. 564 of the same dictionary, it gives the meaning of "general" amongst others, as:

> 1(a) completely or almost universal (b) including or affecting all or nearly all parts or cases of things; 4 not limited in application; relating to whole classes or all cases. 5 including points common to the individuals of a class and neglecting the differences (a general term).

From these meanings of "annual general meeting", "annual" and "general", four points may be noted. They are that the meeting is:

(i) of members, and,

(ii) held annually.

(iii) "general" in "annual general meeting" is an adjective qualifying and descriptive not of "meeting" but of members and such members are members of their own kind – that is to say, sharing something or sharing a common interest (sui generis). As an adjective also, "general" qualifies and describes members to mean all or entire or almost or nearly so. In these senses, "general" is a word of a generic nature.

(iv) "annual" in "annual general meeting" is an adjective qualifying "meeting". "annually" is synonymous with "yearly" meaning occurring every year.

It is not in dispute that meetings in these sections refer exclusively to meetings of members of the Malaysian Bar as a body corporate. In this sense, they are corporate meetings, comparable to company meetings, and not social meetings or gatherings of members; and without disrespect to and in no sense demeaning the professional standing of members of the Malaysian Bar relative to the non professional standing of the shareholders of a company, such meetings of members correspond to the shareholders' meetings when viewed objectively and dispassionately. Against this backdrop and in this context, meetings of members under these sections are required for the transaction of the business of the Malaysian Bar with reference to the many purposes professed in s. 42 of Act 166 for which it is established. Their attendance and participation at meetings are essential to the deliberation and decision of such matters of business. To secure their attendance and participation, meetings have to be called or convened by the Bar Council, validly held and proceedings thereat properly conducted or regulated by the chairperson by observing the procedures laid down in Act 166. Otherwise, such meetings are ultra vires and a nullity.

At this juncture, it is perhaps not inappropriate to remind ourselves of the relevant principles of law applicable to bodies corporate generally which have been reiterated by the Federal Court in *Fadzil bin Mohamed Noor v. Universiti Teknologi Malaysia* [1981] 2 MLJ 196 at p. 198 left hand column B – D per Raja Azlan Shah CJ (Malaya) (as he then was):

> The University was incorporated under Act 30 of 1971. It is a corporate body, and as such it can only do such acts as are authorised directly or indirectly by the statute creating it: see *Attorney-General v. Leeds Corporation* [1929] 2 Ch 291. In *Public Textiles Bhd v. Lembaga Lektrik Negara* [1976] 2 MLJ 58. This court said in relation to a corporation that whatever is not permitted expressly or by necessary implication by the incorporating statute is prohibited not by express or implied prohibition of the legislature but by the principle of *ultra vires.* Therefore the university authority can only act in pursuance of the powers given to it by law. It follows that it has to follow proper procedure as prescribed by law before condemning an erring member of the staff. If it goes outside its limit of operation, or is not warranted by it, then any decision made by it is *ultra vires.*

The particular points of law to be considered in this appeal are:

(a) whether an annual general meeting or other general meeting involves the attendance and participation of all or nearly all members or does not;

(b) whether the formula for the quorum namely, 1/5 X total number of members of the Malaysian Bar personally present or more prescribed by s. 67(1) applies to an annual general meeting as it applies to other general meeting or not; and if it does not apply,

(c) whether some indefinite number of members present is the quorum of an annual general meeting.

Although there is no specific definition of what "member" in ss. 65, 66 and 67 means in the interpretation section ie, s. 3,it is known from s. 43 that "member" consists of every advocate and solicitor holding a valid practising certificate "advocate and solicitor" and "solicitor" are defined in s. 3 to mean advocate and solicitor of the High Court (in Malaya) admitted and enrolled under Act 166 or its predecessor. In the context of ss. 65, 66, and 67 and by necessary implication s. 64 as well although not expressly mentioned therein, "member" is used in a limited sense to refer to only those members who are not in arrears with their subscription payable under s. 46 for the obvious reason that only those members are eligible to attend and vote at any general meeting: see s. 44.

It is a fact acknowledged by the courts that the legal profession in West Malaysia as in East Malaysia is a fused profession of advocates and solicitors into one legal profession: see *Re An Advocate* [1964] 30 MLJ 1. And our Parliament has aptly named Act 166, the Legal Profession Act 1976, as its short title: see s. 1(1) of Act 166. Thus in West Malaysia, advocates and solicitors are admitted by the High Court as advocates and solicitors of the High Court in Malaya, enrolled and practise (if in practice) as such. In Sarawak and Sabah, lawyers are admitted by the High Court in Borneo in Sarawak or in Sabah as the case may be, simply as advocates and enrolled accordingly.

Section 35(1) of Act 166 declares thus:

> **Right of advocate and solicitor**
>
> 35. (1) Any advocate and solicitor shall, subject to this Act and any other written law, have the exclusive right to appear and plead in all Courts of Justice in Malaysia according to the law in force in those Courts; and as between themselves shall have the same rights and privileges without differentiation.

Section 88A of Act 166 and the Legal Profession (Practice & Etiquette) Rules 1978 published as P.U.(A) 369/1978 apply to one and all advocates and solicitors alike in West Malaysia as a single legal profession: see *Re An Advocate (supra).*

From the above, it is patent that membership of the Malaysian Bar is one and the same kind ie, *sui generis*.

From the above too, my conclusion is that the term "general meeting" in these sections means a meeting open to all or almost all members of the Malaysian Bar. The words "general meeting" within the term "annual general meeting" bears the same meaning. The function of the adjective "annual" in "annual general meeting" is to describe that this particular general meeting is convened yearly. The indefinite article "an" immediately preceding the term "annual general meeting" in s. 64(1) is indicative that this particular general meeting is held once only in each year and before the first day of April. In this regard the shoulder note "Annual general meetings" immediately above s. 64(1) should correctly be in the singular. Thus I conclude also that an annual general meeting is a general meeting within the meaning of that term in s. 67 and the sub-heading "General meeting of the Malaysian Bar" in italics as a label is adequately descriptive and indicative of the scope of ss. 64 to 67 to which it refers.

Here, learned counsel for the appellant says that "annual general meeting" and "general meeting" are two distinct meetings and the High Court erred in not having made this distinction. His point made here is that because an annual general meeting is distinct from general meeting, the former is excluded from the latter. The result is that the quorum requirement prescribed in s. 67(1) is confined to general meetings. There is no quorum requirement prescribed under Act 166 for an annual general meeting he says. That being the position, the common law quorum applies to an annual general meeting.

Of all general meetings of the Malaysian Bar, the annual general meeting is obligatory in the sense that it is required by s. 64(1) to be held. The other general meetings convened under s. 65 are non-obligatory. Perhaps, for this reason, it is singled out, called by a name ie, "annual general meeting" to distinguish it from the others and referred to by that name in these sections although not always uniformly. In the first instance, it is given the name "annual general meeting" by s. 64(1) and is referred to by that name in full in the shoulder note immediately above s. 64(1) and in the opening sentence of s. 64(2), and in s. 65(1) and s. 66. At other times, as in s. 64(2)(b) and s. 65(5),it is referred to as "such general meeting" and "the annual" simply, for short, respectively (see the comments generally on the legislative drafting of Act 166 by the late Professor Tan Sri Ahmad Ibrahim noted in [1976] 1 MLJ cii.) In this sense, there is a distinction. But the distinction is in name only and is purely formal. It may be added here by way of comment and for the sake of clarity, that being a term designated to mean only that solitary general meeting, the purpose whereof was to distinguish it from the other

general meetings, that that term could perhaps be better drafted by placing it within inverted commas as eg, in s. 143(1) of the Companies Act 1965 (Act 125); alternatively, to have it spelt with a capital A, G, and M in conformity with its abbreviated form "AGM" as a name by which it will be identified from the other unnamed general meetings when references are made to it subsequently.

The phrase "other than" used in the context of s. 65(1) and in s. 66 bears a uniform meaning that is to say, apart from or besides or in addition to: see *Government of Malaysia v. Chong Woo Yit* [1988] 2 MLJ 534 at p 535 per Wan Yahya J and the 5th meaning of that phrase given in the *Shorter Oxford Dictionary*, 3rd ed. p. 1391. The meetings are of the same genus as the annual general meeting that is to say, general meetings convened under the same power of the Bar Council. The general meetings convened under s. 65(1) are, however additional to (not exclusive of, as the appellant contends) the annual general meeting under s. 64(1) and consequently, are convened separately and not together with an annual general meeting as one.

Essentially, an annual general meeting is still a general meeting in that it involves the attendance and participation of all or almost all the members of the Malaysian Bar.

The items of business matters on the agenda to be dealt with at an annual general meeting may or may not be the same as those on the agenda of other general meetings called under s. 65 and perhaps more, or perhaps less as the occasion may require and in this regard I am not unmindful of what matters have been prescribed under s. 64(2)(a) and (b), but these matters are irrelevant to and do not alter the essential character of a general meeting, namely, the attendance and participation of all members or almost all members of the Malaysian Bar. That is the determining factor of whether a meeting is a general meeting or not. It is open to members to propose any motion and ask any question under s. 65(5) and s. 67(3) alike at an annual general meeting or other general meeting. This must necessarily involve their attendance at such meetings and also the exercise of their voting rights so that decisions thereon can be taken.

In my view, the answer to the point of law in (a) lies in the word "general" used in the terms "general meeting" and "annual general meeting". Having regard to the dictionary meanings of "general" and to the membership, attendance and voting rights of members provided in ss. 43 and 44, my answer is in the affirmative in respect of the issuance and service upon all eligible members of the notices calling for such meetings.

Although membership of the Malaysian Bar is compulsory and meetings are open to all members and in that sense, "general", in that notices calling for or convening such meetings and specifying the date, time and place of such meetings are required to be issued to all, attendance at such meetings is not. Members may or may not choose to attend. Because attendance of members is not compulsory, voting likewise is also not compulsory. Section 67(1) requires one-fifth of the total membership of the Malaysian Bar to be personally present to form the quorum for a valid general meeting and s. 67(3) dictates that a two-thirds majority vote of the quorum present is essential to the validity of any decision taken on any question at a general meeting. If the quorum is not present the meeting has to be dissolved by the chairperson and no business shall be transacted.

In the light of the above and with reference to the point of law in (a) again, I also conclude that the attendance and participation of only one-fifth of the total membership is required for the holding of the annual general meeting and other general meeting(s) of the Malaysian Bar. It follows from this, that my answer to the point of law in (b) is also in the affirmative.

There is, to my mind, no ambiguity in the language and their meanings interpreted in the context of these sections having regard to the dictionary meanings which are clear. It must be assumed that Parliament was not uninformed of the meaning of "general meeting" or of the full implication and effect of an increase in the quorum and the votes required for a valid decision-making process of the Malaysian Bar by the amendment to s. 67; in short, that an annual general meeting is a general meeting and that an increase in the quorum of a general meeting means an increase in the quorum of an annual general meeting. That was the will of Parliament by the amendment to s. 67 introduced by the Legal Profession (Amendment) Act 1978 (Act A 419) in force from 24 January 1978 and it is the function of the court to give effect to it as expressed in the amended s. 67.

It is not the business of the court to seek to distinguish an annual general meeting from a general meeting or to speculate what other intention that Parliament had or might not have had when passing such an amendment such as, to disturb only other general meetings under s. 65(1) but not annual general meeting under s. 64(1) and then to resort to the purposive approach provided in s. 17A of the Interpretation Acts 1948 and 1967 (Act 388) in order to exclude an annual general meeting from the application of s. 67 and limiting it only to other general meetings in the way submitted by counsel for the appellant. For as the Supreme Court said in *Wong Pot Heng & Anor v. Zainal Abidin Putih & Anor* [1990] 2 CLJ 174; [1990] 1 CLJ (Rep) 312 per Mohamed Azmi SCJ:

> The purposive construction of statutes was first adopted by the House of Lords in the *Fothergill v. Monarch Airlines* [1980] 3 WLR 209 . It is a well established principle that the purposive approach to the interpretation of legislation only applies where any doubt arises from the terms or words employed by the legislature. But where the words are precise and unambiguous, then the literal and strict construction rule should apply.

and also at H:

> Where there is no ambiguity in the legislation, the court has no other duty but to adopt the literal and strict construction rule even though the result may appear to produce an unpopular result.

(See also *Kerajaan Malaysia v. Wong Pot Heng & Anor* [1997] 2 CLJ 188 (FC))

It is apparent in the course of submission that the problem lies in securing the attendance of one-fifth (1/5) of the entire membership to be present. The appellant's complaint is that the quorum is too big to achieve on the ground now and will become increasingly difficult to achieve in the years to come as the total membership swells because attendance at general meetings (whether annual general meeting or other general meetings) is not compulsory. This however, is a practical problem and is not a legal one. The solution to this problem would appear to lie with Parliament for a suitable amendment to Act 166.

That being the legal position, the point of law in (c) does not arise.

The quorum requirement in s. 67(1) is the quorum authorised directly by Act 166 for an annual general meeting and other general meeting of the Malaysian Bar as a body corporate and no other. The Malaysian Bar is expressly empowered to substitute a greater number for the quorum fixed by s. 67(1) but not a smaller number as contended by counsel for the appellant. The latter is prohibited by the principle of ultra vires as the Federal Court said in *Fadzil*'s case *(supra)*.

Given that the total membership of the Malaysian Bar current at the date of the 59th AGM for the year 2004/2005 was 11, 755, the quorum required for a valid annual general meeting was 2351 based on the formula prescribed in s. 67(1). The number of members present at that AGM was given at 1,152 which was 1199 members short of the quorum of 2351 members.

Since the quorum was not present, the 59th AGM ought to have been dissolved by the chairperson and no business transacted in compliance with the express prohibition in s. 67(2) and (1).

As the 59th AGM in fact went ahead contrary to such prohibition, it was clearly *ultra vires* and a nullity.

Conclusion

For all these reasons stated, I upheld the judgment of the High Court that the 59th AGM of the Malaysian Bar at the Hotel Nikko on 19 March 2005 was invalidly held and affirmed the orders of the court. Consequently, this appeal is dismissed with costs. Deposit was to be refunded to the appellant.

Abdul Aziz Mohamad JCA:

The Annual General Meeting of the Malaysian Bar ("the Bar") on 19 March 2005 proceeded with the presence of 1,152 members. On the application of the respondent, the High Court declared the meeting to be null and void for lack of quorum and made ancillary declarations and orders. The learned judge held, on the basis of subsection (1) of s. 67 of the Legal Profession Act 1976 ("the Act"), that the meeting required the presence of one-fifth of the total number of members of the Bar to constitute a quorum, which it did not have, because the total number of members then was 11,755 and one-fifth would be 2,351, but only 1,152 members were present. The Bar appealed.

Under the Advocates and Solicitors Ordinance 1947, which the Act replaced and repealed in 1976, the position was this. Subsection (1) of s. 43 provided for the summoning by the Registrar of the Supreme Court in each year of "a meeting of all practitioners practising in the Malayan Union", which meeting was called "the Annual General Meeting of the Bar". Subsection (2) provided that at the annual general meeting ten practitioners shall form a quorum. The Ordinance did not provide for any other kind of general meeting of the then Bar. There was only the annual general meeting. And clearly a quorum was prescribed for it.

The Act, however, provides not only for the annual general meetings of the Bar but also for other general meetings of the Bar. These meetings of the Bar are provided for in that segment of Part V that comprises ss. 64 to 67 and that bears the heading "General Meeting of the Malaysian Bar". I reproduce that segment:

> **Annual general meetings.**
>
> 64. (1) The Bar Council shall each year convene an annual general meeting of the Malaysian Bar to be held before the first day of April.
>
> (2) The Bar Council shall cause to be prepared and presented to the annual general meeting:

(a) a report on the activities of the Malaysian Bar during its term of office; and

(b) proper accounts, duly audited, of all funds, property and assets of the Malaysian Bar for the twelve months terminating on the 31st day of December immediately preceding such general meeting.

General meeting

65. (1) The Bar Council may convene a general meeting of the Malaysian Bar other than the annual general meeting at any time the Bar Council considers it necessary or expedient.

(2) Any fifty members of the Malaysian Bar may at any time requisition a general meeting by written notice in that behalf signed by them and served on the President, Vice-President or the Secretary of the Malaysian Bar; and the Bar Council shall convene a general meeting to be held within thirty days of such service.

(3) The written notice shall specify the object of the proposed meeting.

(4) If the Bar Council fails to convene a general meeting in accordance with the requisition within thirty days of the service of such requisition, the requisitioning members may convene the general meeting within sixty days of such service.

(5) If any member of the Malaysian Bar desires to propose any motion to be considered at the annual or other general meeting to be convened under this section, he shall not less than seven days before the date of the meeting serve upon the Secretary of the Malaysian Bar notice of such motion in writing.

Voting.

66. At every general meeting other than an annual general meeting, every member present shall have one vote and the Chairman of that meeting shall have a casting vote.

Quorum.

67. (1) The quorum for a general meeting of the Malaysian Bar shall be one-fifth of the total number of members of the Malaysian Bar personally present or any greater number as shall be provided under any rules made pursuant to section 42(2)(d) and no business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.

(2) Any general meeting, whether convened on the requisition of members pursuant to section 65 (2) or convened pursuant to section 65 (4), shall be dissolved if a quorum is not present within half an hour from the time appointed for holding the meeting.

(3) Any question at a general meeting of the Malaysian Bar shall be decided by the votes of not less than two-thirds of the members present and voting.

The quorum provision is subsection (1) of s. 67. When the Act first came into being in 1976, the quorum was fifty members. It was increased to the present one-fifth of the total number of members by an amendment in 1978 (Act A419). Considering that the 1947 Ordinance did provide for and specify a quorum for an annual general meeting of the then Bar, one might naturally ask whether in the Act which replaced and repealed the Ordinance Parliament did provide for and specify a quorum for an annual general meeting of the Malaysian Bar, at the same time feeling, perfectly naturally and understandably, that it would be odd indeed if Parliament did not. And the Bar themselves answered yes, for right from the time the Act came into existence they had been conducting their annual general meetings on the basis that the quorum for an annual general meeting was as provided in subsection (1) of s. 67, that is, fifty members at first and one-fifth of members subsequently, until, that is, the annual general meeting on 19 March 2005, when, after the quorum question was raised, it was decided to proceed with the meeting because legal opinions had been obtained that the requirement of subsection (1) of s. 67 does not apply to an annual general meeting. Their previous stand in favour of the application of the subsection to an annual general meeting could only have been because they construed the words "general meeting" in the subsection to include an annual general meeting. And that too was essentially the reason why the learned judge decided as he did. He construed a general meeting to refer also to, or include, an annual general meeting. I was unhesitatingly of the same view, and it was simply on that view that I decided that the Bar's appeal should be dismissed. Tuan Haji Sulaiman for the Bar said that the point to be decided was a simple one. It was indeed a simple one because the answer was obvious, clear and simple. It was inevitable that the case should turn out to be a heavy one, fraught with all kinds of subtle argument, when the Bar now tried to show that the obvious, clear and simple position that they had been standing by all these years was a wrong one.

The learned judge was criticized on several grounds for citing Brinsden J in *Harman v. Energy Research Group Australia Ltd; Davidson v. Energy Research Group Australia Ltd* [1984-1985] 9 ACLR 897 in support of his opinion that "general meeting" in subsection (1) of s. 67 refers also to an annual general meeting. But it was not necessary for the learned judge to resort to any authority for support of his opinion. By the inevitable logic of language, "general meeting" is a generic term and any variety of general meeting has to be a general meeting. General meeting is the genus and annual general meeting is a species. The genus includes the species. The position is so inevitable that it does not require law to lay it down.

It is clear from ss. 64 to 67 that in those sections Parliament intended to deal with all types of general meeting. As will be pointed out specifically after this, it chose the term "general meeting" when it intended to refer to all types of general meeting, including the annual general meeting, but used appropriate words when it intended to exclude an annual general meeting, and it used the words "annual general meeting" when it intended the provision to apply only to an annual general meeting. That Parliament intended to use the term "general meeting" as including an annual general meeting is, apart from its being a matter of inevitable logic of language, borne out by the fact that the title to the segment uses the term "general meeting", which indicates that Parliament intended that all meetings dealt with in the segment, including the annual general meeting, are general meetings, and by the fact that where a provision speaks of a "general meeting" but is not intended to apply to an annual general meting, the annual general meeting is expressly excluded. The exclusion is necessary because Parliament was aware and intended that "general meeting" includes in the first place, that is unless excluded, an annual general meeting.

Mr. Tommy Thomas for the Bar, while acknowledging the genus-species logic, said that a close scrutiny of the provisions, while applying that logic to them, would indicate that Parliament's intention is not so clear, and he took the court through the provisions and ended by suggesting that the test of genus and species failed in certain provisions. I was decidedly unable to agree with him. Let me now go through the provisions.

Section 64 applies only to an annual general meeting. It requires an annual general meeting to be convened each year by the Bar Council to be held before the first day of April and specifies the mandatory matters to be presented at the annual general meeting.

The shoulder (previously marginal) note to s. 65 indicates that the section deals with general meetings which, as I said, would include an annual general meeting unless excluded. Subsection (1) is about general meetings that the Bar Council may convene. But an annual general meeting is excluded. So subsection (1), by the exclusion, applies only to a general meeting that is not an annual general meeting. Subsection (2) is about general meetings that the Bar Council are obliged to convene upon a requisition of members made at any time. By the genus-species logic, it would apply also to an annual general meeting, but an annual general meeting is excluded, although this time not by express words but by the context, because an annual general meeting is not, and need not be, requisitioned by members as the Bar Council have a duty to convene it in any case and, further, it is not a meeting that may be held at any time but

one that must be held before the first day of April. Subsection (3), by the mention of the "written notice", must relate to a requisitioned general meeting under subsection (2), from which, as I just said, the annual general meeting is excluded. Subsection (4) obviously relates to a requisitioned general meeting under subsection (2)

Subsection (5) of s. 65 is about the manner of and time for proposing mentions. It applies to all general meetings, including an annual general meeting. The inclusion of an annual general meeting has to be expressed and not be left to depend on its inclusion by the genus-species logic in the words "general meeting" because since the rest of s. 65 deals with general meetings that are not annual general meetings, the words "general meeting" in subsection (5) might be construed to also exclude an annual general meeting. To leave no doubt that an annual general meeting is included it is expressly mentioned. Because of the express inclusion of an annual general meeting in subsection (5), Mr Tommy Thomas argued, I presume as an example of the failure of the genus-species test that he suggested, that the shoulder note "General meeting" for s. 65 is inaccurate. It is not inaccurate. "General meeting" covers both an annual general meeting and a general meeting that is not an annual general meeting, and s. 65 does deal with all types of general meeting – in subsections (1) to (4) with general meetings that are not annual general meetings and in subsection (5) with annual general meetings as well. It would be inaccurate only when one looks at it from another angle, one at which Mr. Tommy Thomas did not position himself. Originally s. 65 had only subsections (1) to (4), so that the shoulder note was confined to those subsections. Subsection (5) is an addition of 1983 (Act A 567). As I have shown, by express and contextual exclusions, annual general meetings are excluded from the otherwise all-embracing term "general meeting" in those subsections. It may be argued that originally the shoulder note "General meeting" would be inaccurate if the term was meant to include an annual general meeting because subsections (1) to (4) do not include annual general meetings. It would be wider than the scope of those subsections. To be accurate the shoulder note should have said "General meeting other than annual general meeting". But a shoulder note is not intended to be accurate to that extent. It can never completely encapsulate the substantive enactment. It serves only as an indication of what the related provision is about. From the fact that the shoulder note for s. 65 as it originally stood with only subsections (1) to (4) would be wider than the substantive enactment, it cannot be argued that the "General meeting" of the shoulder note does not include an annual general meeting and likewise "general meeting" in the body of the provisions does not include an annual general meeting even without an exclusion and that therefore the genus-species logic fails. That would be giving shoulder notes a greater importance than is properly due to them.

Incidentally, while on subsection (5) of s. 65, may I point out a matter, although it is not something that Mr. Tommy Thomas took up. It is in the phrase "the annual or other general meeting to be convened under this section". As the words are arranged, their effect is to say "the annual general meeting to be convened under this section or other general meeting to be convened under this section", so that the annual general meeting is said to be convened under s. 65. That is not so, as the annual general meeting is convened under s. 64. It is simply a drafting lapse. The phrase might have been worded instead "the annual general meeting or other general meeting to be convened under this section" so as to remove at least the certainty, which exists in the phrase as actually drafted, that the words "to be convened under this section" would relate also to "the annual … general meeting".

To proceed, s. 66 is about voting power. The words "general meeting" would include an annual general meeting but for the express exclusion. Mr. Tommy Thomas observed that with the exclusion there would be no provision about voting power for an annual general meeting. That would indeed be a problem. But what of it? It cannot detract from the fact that "general meeting" would include an annual general meeting unless it is excluded, and it is excluded. It is the exclusion that renders s. 66 inapplicable to an annual general meeting. If not for the exclusion, s. 66, by the words "general meeting", would apply to an annual general meeting and Mr. Tommy Thomas's observation, with whatever point he intended to make by it, would not arise. In the Legal Profession Act (Cap. 161) of Singapore, on which it was said that our Act was modelled and in which the corresponding sections are ss. 67 to 70, to whose pattern and approach of drafting our sections have an affinity, the problem does not arise because the annual general meeting is not excluded. To demonstrate what I say, and for a later reference, I reproduce those sections:

Annual general meeting

67. (1) The Council shall each year convene an annual general meeting which shall be held in the month of October of that year.

(2) At least 10 days' prior notice of the annual general meeting shall be given to all members of the Society.

(3) Notwithstanding section 54, every Council that ceases to hold office on 31st December in each year shall cause to be prepared and presented to the annual general meeting:

(a) a report on the activities of the society; and

(b) proper accounts, duly audited, of all funds, property and assets of the Society,

for the year terminating on 31st December immediately preceding that general meeting.

Extraordinary general meeting

68. (1) The Council may convene a general meeting of the Society other than the annual general meeting at such time or times as the Council thinks expedient or necessary.

(2) Any 25 members of the Society may at any time requisition a general meeting by written notice in that behalf signed by them and deposited with the President or a Vice-President of the Society and the Council shall convene a general meeting to be held within 30 days of the deposit.

(3) Such written notice shall specify the object or objects of the proposed meeting.

(4) If the Council fails to convene a general meeting in accordance with the requisition 14 days after such deposit, to be held within 30 days after the deposit, the requisitioning members may convene that general meeting within 2 months after the deposit.

Voting

69. At every general meeting, every practitioner member present shall have one vote, and the chairman of that meeting shall also have a casting vote.

Convening and procedure

70. (1) The manner of convening general meetings of the Society and the procedure thereat shall, subject to the provisions of this Act, be regulated by by-laws made by the Society.

(2) The by-laws made under this section shall not provide for a quorum at a general meeting other than the annual general meeting of less than 50 practitioner members personally present.

The provision about voting power is s. 69. By the words "general meeting" and without the exclusion, the section would apply to an annual general meeting.

Recalling the previous discussion in para. 10, it is interesting to note that, by express and contextual exclusions, s. 68 of the Singapore Act applies only a general meeting that is not an annual general meeting. The position is like that of our s. 65 before subsection (5) was introduced. The shoulder note to Singapore's s. 68 gives a specific name to a general meeting that is not an

annual general meeting. The name is "Extraordinary general meeting", which naturally precludes an annual general meeting. Singapore's shoulder note thus accurately describes the scope of s. 68 as dealing with general meetings that are not annual general meetings. Incidentally, we were informed that in this country a general meeting of the Bar that is not an annual general meeting is customarily also called an extraordinary general meeting.

I proceed now to our s. 67, which is about quorum. By the genus-species logic, subsection (1), which specifies the quorum and which is the provision of the controversy in this case, applies to all general meetings, including an annual general meeting, because there is no exclusion of an annual general meeting. Subsection (2) is about absence of quorum. By the words "Any general meeting", the subsection may be thought to apply to all general meetings, including an annual general meeting, but the parenthetic clause which begins with the words "whether convened" poses a problem. To make the subsection apply to all general meetings, the words "Any general meeting" alone would be sufficient. But with the parenthetic clause it may be thought that Parliament intended to qualify the words "Any general meeting" so as to limit the application of subsection (2) to the meetings mentioned in the clause, namely general meetings requisitioned or convened pursuant to subsection (2) or (4) of s. 65. This led Mr. Tommy Thomas to observe that subsection (2) of s. 67 does not apply to a general meeting convened by the Bar Council under subsection (1) of s. 65 without a requisition. He might also have said, for the same reason, but did not, that subsection (2) of s. 67 also does not apply to an annual general meeting. The question of the scope of subsection (2) of s. 67 did not call for a decision in the appeal and was not specifically argued, but whatever may be the correct scope of the subsection, the cause of the problem that gave rise to Mr. Tommy Thomas's observation, namely the parenthetic clause, does not in any way affect the genus-species logic or invalidate or render it unworkable. Or I should say rather that the cause of the problem is not in the genus-species logic but in the parenthetic clause.

Subsection (3) of s. 67 is about the strength for deciding votes. Applying the genus-species logic to the words "general meeting", the subsection must apply to an annual general meeting as well. Mr. Tommy Thomas, however, argued that the subsection is not likely to apply to an annual general meeting and his reason is this. In relation to an annual general meeting, subsection (5) of s. 65 speaks of proposing a "motion" whereas subsection (3) of s. 67 speaks of deciding a "question". Mr. Tommy Thomas said that there is therefore a lack of harmony between the two subsections. To me there clearly is harmony. What a motion proposes is a question to be decided. Furthermore, there may be a question to be decided other than those contained in motions.

To conclude this aspect of the appeal, in my view Mr. Tommy Thomas's attempt to show that the genus-species logic or test, which he acknowledged, would fail in its application to the sections had little strength, if any, and failed.

Tuan Haji Sulaiman pointed to the fact that in the case of the annual general meeting of a State Bar a quorum is expressly provided in subsection (2) of s. 70 of the Act, which section is about annual general meetings of State Bars. He suggested that the reason a quorum is provided for an annual general meeting of a State Bar is because at the annual general meeting of a State Bar elections of members of the State Bar Committee and of representatives of the State Bar on the Bar Council are carried out. Maintaining that a quorum is not provided for an annual general meeting of the Malaysian Bar, he said that that was because no elections are carried out at the annual general meeting.

In my opinion the fact that s. 64 does not expressly provide for the quorum for an annual general meeting of the Malaysian Bar whereas s. 70 does expressly provide for the quorum for an annual general meeting of a State Bar has nothing to do with whether or not elections are carried out at either annual general meeting. The reason, I think, is purely one of drafting technique. As has been seen, the drafting approach for the provisions relating to meetings of the Malaysian Bar is to provide a section specifically for the annual general meeting to be followed by other sections for general meetings, which may or may not include an annual general meeting and in which, for economy of drafting, provisions that are to apply also to an annual general meeting are set out. One such provision is the quorum provision. These common provisions could have been included also in s. 64 for annual general meetings but that would not have made for economy of drafting. In the case of the State Bar, however, when the Act first came into being there was only s. 70, about an annual general meeting. There was no provision for general meetings that are not an annual general meeting. So all that was needed to be provided for an annual general meeting, including the quorum, had to be put into s. 70. There was no opportunity for economy of drafting as existed when drafting the provisions for the meetings of the Malaysian Bar. Section 70A, about general meetings of the State Bar that are not an annual general meeting, was inserted later in 1983 (Act A 567). All matters that were needed for such general meetings, including the provision as to quorum, had to be put in s. 70A. The result is that s. 70 and 70A are mutually exclusive, that is, there is no provision in s. 70A that is applicable also to an annual general meeting under s. 70.

Mr. Tommy Thomas, as also Tuan Haji Sulaiman, pointed to the fact that subsection (1) of s. 64 requires the annual general meeting of the Bar to be held before the first day of April, saying in effect that that is a very important object of the Act that must override considerations of quorum. That date is a very important date, it was said, because on the holding of the annual general meeting by that date depends matters, such as the functioning of the Bar Council, on which the governance of the legal profession depends. It was argued that if the Act was construed so as to require a quorum of one-fifth of the total number of members for an annual general meeting, and the quorum was incapable of being obtained, as happened on 19 March 2005, then the important object of the Act of having the meeting held before the first day of April would not be achieved. Further, it was argued that even if it were assumed that there is implied power to adjourn the meeting to another date, the Act does not provide for the quorum for an adjourned meeting, and if it were assumed that the quorum would still be one-fifth, the quorum might still not turn up. The result would be that there would not be held an annual general meeting ever or for an indefinite period and that would be disastrous for the legal profession. It was submitted that Parliament could not have intended such a result. Mr. Tommy Thomas submitted that to avoid such a consequence so as not to frustrate the intention of Parliament, s. 17A of the Interpretation Acts 1948 and 1967, which calls for the adoption of the purposive approach in the interpretation of statutes, should be applied in this case, and applied with the result that it be held that the quorum prescribed by subsection (1) of s. 67 does not apply to an annual general meeting.

I was of the view that s. 17A and the purposive approach do not apply in this case. Section 17A says as follows:

> 17A. In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

It is clear from the very wording of the section that it is intended to apply where the interpretation of a provision of an Act yields two contending constructions, one that would promote the purpose or object underlying the Act and one that would not, and it is not possible, using the traditional rules of construction, to determine which construction was intended by the legislature. Then the court should choose the construction that would promote the purpose or object of the Act. The rule does not apply where, using the traditional rules of construction, the provision or word in question appears to the court to be capable of only one construction. In this case the provision that calls for interpretation is subsection (1) of s. 67, specifically the words "general meeting"

in the subsection, which appear elsewhere in the other sections. And it is not even a question of what is the meaning of the term "general meeting". The question is whether it includes an annual general meeting. Mr. Tommy Thomas acknowledged the genus-species logic and was, in my view, unable to show that the logic or test fails when its application to the term in ss. 65, 66 and 67 is examined. To the learned judge in the High Court and to me it was clear that "general meeting" must include an annual general meeting. Therefore an annual general meeting requires the quorum prescribed in the subsection. Whatever may be the consequences of that, the purposive approach exhorted by s. 17A cannot be applied. The position is as clear and certain as if subsection (1) of s. 67 were projected into s. 64 to visually appear to apply to an annual general meeting. If s. 64 had the quorum provision, the consequences painted so direly by Tuan Haji Sulaiman and Mr. Tommy Thomas could still be feared, but it would not be possible to argue that therefore the purposive approach should be adopted so as to ignore or nullify the quorum provision. *Fiat justicia, ruat caelum*, said Tuan Haji Sulaiman, let justice be done, though the heavens should fall, but, he urged, in this case apply the purposive approach and let not the heavens fall. The purposive approach cannot be used to prevent a calamity that is conceived will result from the interpretation of a provision in a certain way where the construction is clear. It cannot be used to change the clear intention of the legislature. The remedy or prevention lies with the legislature, not with the courts.

As part of, or in tandem with, the call for the application of the purposive approach, Dato' Cecil Abraham submitted that the increase in the quorum in subsection (1) of s. 67 from fifty members to one-fifth membership was prompted by a resolution of the Malaysian Bar at a general meeting in October 1977, which was not an annual general meeting, that members should boycott trials under the Essential (Security Cases) Regulations 1975, that therefore the mischief that the amendment for the increase was directed at was a resolution passed at a general meeting that was not an annual general meeting, and that therefore the increased quorum should not be construed to apply to an annual general meeting. To me it was obvious that the event which occasioned the increase cannot make a difference to the question of the application of the increase, which depends on the scope of the term "general meeting", because if, on a proper construction of the term, the previous quorum did not apply to an annual general meeting, then it would necessarily follow that the increased quorum would not apply to an annual general meeting, but if otherwise, then it would necessarily follow that the increased quorum would apply to an annual general meeting. A quorum provision cannot one day apply to a particular meeting and on another day, when the quorum is increased, be construed not to apply to the meeting. The mischief argument might apply to a change in

the character of the law. But where the change in the law is only in the size of a particular thing the scope of application of the size remains irrespective of the event that occasioned the change.

It is instructive to note that the Parliamentary Debates record an instance of a debate proceeding on the basis that the increased quorum would apply to an annual general meeting. In the Senate on 12 January 1978, Senator Kamarul Ariffin expressed the fear that with the increased quorum it might not be possible to hold an annual general meeting. The Minister of Law, Datuk Seri Haji Hamzah Abu Samah, delivered his reply on the following day. If the intention had been that the new quorum would not apply to an annual general meeting, the Minister would have said so in complete answer to the Senator's fears. But the Minister did not say so. His reply was essentially that the one-fifth quorum would encourage more members of the Bar to attend general meetings. That the Minister did not say that the one-fifth quorum would not apply to an annual general meeting in face of the Senator's specific expression of his fears about an annual general meeting would indicate that to the Minister the quorum would apply to an annual general meeting. If the intention of Parliament may be gathered from the Parliamentary Debates, we have here an indication in favour of the proposition that Parliament did not intend that the one-fifth quorum would not apply to an annual general meeting.

I have touched on subsection (2) of s. 67, about absence of quorum, and I left open the question of the scope of the subsection, that is, whether or not it applies to an annual general meeting. I wish now to return to it because Tuan Haji Sulaiman said something about it which I feel calls for comment. Let me first set out the development of the subsection. When the Act was first enacted in 1976 with a quorum of fifty the subsection was as follows:

> (2) Any general meeting, convened on the requisition of members pursuant to section 65 (2) or (4), shall be dissolved if a quorum is not present within half an hour from the time appointed for holding the meeting. In any other case, it shall stand adjourned to the same day in the week following next at the same time and place, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall be a quorum.

It contained what Tuan Haji Sulaiman termed a "revival" provision. The revival provision was complete, that is to say, a general meeting would eventually have been able to proceed even though the prescribed quorum was not present. In 1978, when the quorum was increased to one-fifth, subsection (2) was amended by deleting completely the second sentence, which was the complete revival provision (Act A 419). So while Parliament increased the quorum it purposely removed the revival provision. The subsection then became as follows:

(2) Any general meeting, convened on the requisition of members pursuant to section 65 (2) or (4), shall be dissolved if a quorum is not present within half an hour from the time appointed for holding the meeting.

In 1983, by Act A 567, the revival provision was restored, but only partially, only to the extent of enabling the meeting to be adjourned to the following week, without relaxation as to quorum. The provision then became as follows:

(2) Any general meeting, convened on the requisition of members pursuant to section 65 (2) or (4), shall be dissolved if a quorum is not present within half an hour from the time appointed for holding the meeting and shall stand adjourned to the same day in the week next following at the same time and place.

In 1992 (Act A 812) the subsection was substituted with the subsection as it stands at present, which again, as in 1978, completely takes away the revival provision. The present subsection, to quote it again, is as follows:

(2) Any general meeting, whether convened on the requisition of members pursuant to section 65(2) or convened pursuant to section 65(4), shall be dissolved if a quorum is not present within half an hour from the time appointed for holding the meeting.

Tuan Haji Sulaiman said that the present subsection (2) does not have a revival provision because a general meeting is not mandatory. Obviously he was speaking of a general meeting other than an annual general meeting on the basis that subsection (2) does not apply to an annual general meeting. Then he compared the present position with the previous positions, saying that then there was, as indeed there was, a provision for revival. Unfortunately my notes do not indicate what the conclusion was, if any, that he suggested from the comparison. Logically it would follow from the reason that he suggested for the present subsection (2) not having a revival provision, that he would say that previously there was a revival provision because a general meeting was mandatory. Since the only general meeting that is mandatory is an annual general meeting, that would be saying that previously, especially when the Act first came into being, when there was a complete revival provision, subsection (2) applied to an annual general meeting as well. That would be because, by the genus-species logic, a general meeting includes an annual general meeting. But if "general meeting" in subsection (2) originally included an annual general meeting, it would continue to do so unless the contrary is indicated, and the change from the presence of a revival provision in subsection (2) to an absence of it cannot be such an indication. Such a change, just as I opined about the change in the quorum, is not a change that is capable of altering the scope of the application of the provision concerned.

Although my decision that the appeal should be dismissed was for the reason that I agreed with the learned judge that "general meeting" in subsection (1) of s. 67 includes an annual general meeting and therefore the quorum prescribed by it applies to an annual general meeting, I nonetheless feel that I ought to deal with an alternative contention of the respondent. The contention was that if the quorum does not apply to an annual general meeting, then Parliament has not prescribed a quorum for an annual general meeting, in which case the common law applies to require a quorum of the majority of members, so that the annual general meeting of 19 March 2005 still, and to a much greater degree, lacked a quorum. Various authorities were cited, but I shall only quote the following passage from *The Law of Meetings* by Sir Sebag Shaw and Judge E. Dennis Smith, 4th edn (1974), at pp. 67 and 68:

> It has been seen that, subject to few exceptions, the existence of a meeting involves the contemporary presence of at least two persons (*Re Sanitary Carbon Co.* [1877] WN 223; …). It does not follow that two will necessarily suffice. Where matters are to be transacted by a meeting of a defined body whose constituent members are entitled to participate in its deliberations, it would be impolitic, in general, to permit the decisions of only two persons to affect the interests of the entire body. It is usual, therefore, for the regulations of the convening body to require the presence of more than two persons for the constitution of a valid meeting, and the number requisite in any case is termed the quorum. At Common Law, apart from any specific provision, the acts of a corporation must be done by a majority of the corporators, corporately assembled (*Merchants of the Staple of England v. Bank of England* [1887] 21 QBD 160). Thus in the absence of a special custom or particular regulation, a majority of the members of a body must be present at a duly convened assembly in order that an effective meeting should exist. This rule will apply also to meetings of any select body to which certain functions have been delegated (*Rex v. Varlo* [1775] 1 Cowp. 248)
>
> The Common Law rule may be displaced by specific regulation which fixes a quorum otherwise. Such regulation may be contained in, eg, the articles of association of a company, or may result from statutory enactment, as in the case of a meeting of creditors in bankruptcy proceedings.

The passage cites the case of *Merchants of the Staple of England*, a decision of the Court of Appeal, which Encik Zainur Zakaria, counsel for the respondent, specifically cited, besides others, in his written submission.

Tuan Haji Sulaiman's response, which I did not find convincing, was to submit that the common law position was a misconception, that it started with one judge, Wills J in the *Merchants* case, that the statement as to quorum was not the ratio of the decision in that case, and that the common law position is a misconception and does not apply to meetings under a statute.

What, then, to the Bar, is the quorum, according to law, for their annual general meeting? They said that there is a quorum, but not a fixed one, and the quorum is whoever are present at the meeting. But they did not cite any authority to support their contention. They seemed to apply to an annual general meeting – to apply, that is, right from the start – the law as regards the quorum for an adjourned meeting that was laid down in subsection (2) of s. (67) as it stood originally and that has been removed by Parliament. Their contention was, to me, clearly unacceptable.

Dato' Cecil Abraham argued that there is no specific quorum for the annual general meeting of the Law Society of Singapore and that since our Act is modelled on the Singapore Act great weight should be given to the Singapore Act so that it ought to be held that there is no specific quorum for the annual general meeting of the Malaysian Bar. I have set out the provisions of ss. 67, 68 and 69 of the Singapore Act. The quorum for general meetings of the Law Society of Singapore is not prescribed by the Act. Section 70 leaves it to the by-laws. By subsection (2), the by-laws cannot provide a quorum of less than 50 practitioner members for a general meeting that is not an annual general meeting but does not state what the by-laws shall or shall not provide as regards the quorum for an annual general meeting. The by-laws are the Legal Profession (General Meetings) By-laws. Paragraph (1) of by-law 3 says: "At a general meeting, other than an annual general meeting, 50 practitioner members personally present shall form a quorum." It therefore appears to be true that in Singapore no specific quorum is prescribed for the annual general meeting. But that is because the annual general meeting is specifically excluded from the quorum requirement of fifty by the words "other than an annual general meeting". Had there been no exclusion the requirement would apply to an annual general meeting. The position in Singapore cannot be followed here because subsection (1) of our s. 67 does not have words to exclude an annual general meeting from its application. As to what the practice is in Singapore as to the quorum for an annual general meeting in the absence of a prescribed quorum, it was not shown to us that the quorum is whatever number of members that is present.

To conclude, the Bar failed to show that the opinion of the learned judge of the High Court that the quorum for their annual general meeting is the quorum prescribed in subsection (1) of s. 67 was erroneous.

James Foong JCA:

Introduction

This is an appeal by the Bar Council Malaysia, the appellant, against the decision of the learned High Court Judge, Mr. Justice Raus Sharif, who allowed the application of the respondent, a member of the Malaysian Bar, for the following relief:

1. A declaration that the 59th annual general meeting of the Malaysia Bar for year 2004/2005 held on Saturday, 19 March 2005 at the Nikko Hotel is invalid and be set aside.

2. A declaration that the decisions and resolutions passed at the 59th annual general meeting be declared invalid and be set aside.

3. A declaration that the election of the principal office bearers of the Bar Council be deemed void and be set aside.

4. An order that the outgoing Bar Council for the year 2004/2005 and/or the new members of the Bar Council elected for the year 2005/2006 convene a new annual general meeting within 30 days from date of this court order granting the respondent's application to conduct the business of the Malaysian Bar as provided under the Legal Profession Act 1976 (LPA).

Background

The dispute in this case arose in the following manner: The appellant is a body corporate established under s. 41 of the LPA. The management of the affairs of the appellant is vested, by virtue of s. 56 of the LPA, in the hands of the Bar Council. The Bar Council consists of elected members from the Malaysian Bar as well as the respective chairmen of the State Bars with its elected representatives and the immediate past President and Vice-President of the Malaysian Bar. Between them, they select a President, a Vice- President and a Secretary.

On 19 March 2005, at 10am, the Malaysian Bar held its 59th annual general meeting at the Grand Ballroom of Nikko Hotel in Kuala Lumpur. This is a mandatory meeting under s. 64(1) LPA. There were only 1152 members present. When the President of the Malaysian Bar proceeded to refer to the agenda in this meeting, a point of order was called and the question was raised as to whether there is a quorum of one-fifth (1/5th) of members of the Malaysian Bar present at this meeting. The President of the Malaysian Bar informed members present that the appellant has sort four legal opinions from its solicitors with regard to this issue on quorum requirement for an annual general meeting pursuant to s. 64 LPA and, having considered and deliberated

on these legal opinions, took the position that an annual general meeting of the Malaysian Bar can be conducted without a need for one-fifth of the members of the Malaysian Bar present. There was a discussion on this subject where diverse views were expressed. The President of the Malaysian Bar, having listened and considered these, ruled that the 59th annual meeting of the Malaysian Bar would proceed accordingly as there is no legal requirement that a quorum of one-fifth of the members must be present at the annual general meeting of the Malaysian Bar.

The plaintiff and a few other members walked out of the 59th annual meeting of the Malaysian Bar, and on 4 April 2005, the plaintiff instituted this legal action against the appellant.

From these undisputed facts the principal issue, as correctly identified by the learned trial judge, in this case is: whether a quorum of less than one-fifth of the total number of members of the Malaysian Bar is required to be present for business to be transacted at an annual general meeting of the Malaysian Bar. In order to fully appreciate and understand the difference in opinion between the parties in this action, it is necessary, at the outset, to set out ss. 64 to 67 of the LPA relating to meetings of the Malaysian Bar.

General Meeting of the Malaysian Bar

Annual general meetings

64. (1) The Bar Council shall each year convene an annual general meeting of the Malaysian Bar to be held before the first day of April.

(2) The Bar Council shall cause to be prepared and presented to the annual general meeting:

(a) a report on the activities of the Malaysian Bar during its term of office;

(b) proper accounts, duly audited, of all funds, property and assets of the Malaysian Bar for the twelve months terminating on the 31 day of December immediately preceding such general meeting.

General meeting

65. (1) The Bar Council may convene a general meeting of the Malaysian Bar other than the annual general meeting at any time the Bar Council considers it necessary or expedient.

(2) Any fifty members of the Malaysian Bar may at any time requisition a general meeting by written notice in that behalf signed by them and served on the President, Vice-President or the Secretary of the Malaysian Bar; and the Bar Council shall convene a general meeting to be held within thirty days of such service.

(3) The written notice shall specify the object or objects of the proposed meeting.

(4) If the Bar Council fails to convene a general meeting inaccordance with the requisition within thirty days of the service of such requisition, the requisitioning members may convene the general meeting within sixty days of such service.

(5) If any member of the Malaysian Bar desires to propose any motion to be considered at the annual or other general meeting to be convened under this section, he shall not less than seven days before the date of the meeting serve upon the Secretary of the Malaysian Bar notice of such motion in writing.

Voting

66. At every general meeting other than an annual general meeting, every member present shall have one vote and the Chairman of that meeting shall have a casting vote.

Quorum

67. (1) The quorum for a general meeting of the Malaysian Bar shall be one-fifty of the total number of members of the Malaysian Bar personally present or any greater number as shall be provided under any rules made pursuant to section 42(2)(d) and no business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business.

(2) Any general meeting, whether convened on the requisition of members pursuant to section 65(2) or convened pursuant to section 65(4), shall be dissolved if a quorum is not present within half an hour from the time appointed for holding the meeting.

(3) Any question at a general meeting of the Malaysian Bar shall be decided by the votes of not less than two-thirds of the members present and voting.

Arguments Of The Respondent Before The Trial Judge

The arguments of the respondent before the trial judge were basically these: With the opening words in s. 67(1) LPA under the marginal note "Quorum" which states that "The quorum for a general meeting of the Malaysian Bar shall be one-fifth of the total number of members of the Malaysian Bar personally present ..." must be implied to mean that this faction of the members of the Malaysian Bar must be present to legally constitute an annual general meeting of the Malaysian Bar. When such number was not achieved on the 19 March 2005, the 59th annual general meeting of the Malaysian Bar could not have been properly constituted; rendering the purported meeting null and void.

Arguments Of The Appellant Before The Trial Judge

The appellant however maintained in the court below that since the opening words of s. 67(1) LPA excludes the phase "annual general meeting" then the quorum requirement of one-fifth of the members of the Malaysian Bar present at an annual general meeting does not apply. The required number under s. 67(1) of the Act is only confined to general meeting and not annual general meeting. Section 64 LPA must be read independently of s. 67(1) LPA.

To support this argument, the appellant highlighted to the learned trial judge the distinction between annual general meeting and general meeting of the State Bars where ss. 70(2) and 70A(2) LPA expressly demand a quorum of one-third of the total number of members of the State Bar present for these two types of meeting at the State Bar level. Since similar provision is not mentioned in the LPA for the annual general meeting of the Malaysian Bar, then it must be implied that the one-fifth quorum requirement under s. 67(1) LPA does not apply to such annual general meeting. If Parliament had intended for a specific quorum requirement for an annual general meeting of the Malaysian Bar then similar provision as the State Bars' annual general meeting would have been enacted.

Further, the appellant disclosed to the trial judge that initially the quorum requirement under s. 67(1) LPA only demands the attendance of 50 members of the Malaysian Bar present. But in 1978, by an amendment to the LPA, this was increased to one-fifth. The reason behind this amendment was due to an incident where a resolution was passed at a general meeting of the Malaysian Bar to boycott defending cases brought by the prosecution under the Essential (Security Cases) Regulations 1975 (ESCAR). Since this resolution originated from a general meeting of the Malaysian Bar attended by less than 200 members of the Malaysian Bar out of a total of 1,800, the Government felt that to safeguard greater participation of members of the Malaysian Bar at such meeting, there should be a one-fifth of the total number of members of the Malaysian Bar present to constitute such meeting. But at no time, the appellant emphasized, that such quorum requirement applies to an annual general meeting where only routine matters, such as the two statutory items stated in s. 64(2) LPA ie, (a) the tabling of the Bar Council report on the activities of the Malaysian Bar during its term in office and; (b) audited accounts for the same period are to be dealt with.

Judge's Grounds

After ably and succinctly setting out the facts and the issue, the learned trial judge gave the following reasons for allowing the respondent's application.

First, he is of the view that the term general meeting of the Malaysian Bar in the LPA refers to both annual general meeting under s. 64 LPA and, general meeting under s. 65 LPA. The fact that it is an annual general meeting does not make it any less a general meeting. To support this proposition, the learned trial judge cited a passage of Brinsden J in an Australian case of *Harman v. Energy Research Group Australia Ltd; Davidson v. Energy Research Group Australia Ltd* [1985] 3 ACLR 538 which states:

> there is no magic in the use of the word "general". If all the members meet, it seems to me that the meeting must be a general meeting, although at the same time, it may also be an extraordinary general meeting or an annual general meeting.

Second, though the learned trial judge conceded that s. 64 LPA is silent on the quorum requirement, he is of the view that it does not necessarily or automatically supports the contention of a no quorum requirement for the annual general meeting of the Malaysian Bar. This is because s. 64 of the LPA does not stand on its own nor is it independent or self contain. Thus, this section cannot be interpreted to exclude s. 65 and s. 67 of the LPA. The general heading of ss. 64 to 67 LPA, which reads "General meeting of the Malaysian Bar" encompasses both annual general meeting under s. 64 and general meeting under s. 65 LPA.

Third, the learned judge felt that if one were to exclude the one-fifth-quorum requirement in s. 64 then there would be absurdity. He gave an example that an important motion or proposed resolution may be dealt with and passed at an annual general meeting but required a one-fifth number of members present when tabled at a general meeting. This, according to the learned judge is not the intention of Parliament when amending s. 67(1) LPA to increase the quorum for general meeting.

Fourth, to conclude, the learned judge opined that the absence of any mention on quorum requirement under s. 64 for an annual general meeting is "because the words 'general meeting' are used generically with respect to general meeting of the Malaysian Bar, whether it is the annual general meeting under s. 64 or the general meeting under s. 65".

Approach

For the purpose of this appeal, I shall deal with each of the grounds raised by the appellant during this appeal.

1st Ground: Marginal Note

The appellant commenced by submitting that the learned trial judge has erred in failing to draw a distinction between an annual general meeting under s. 64 of the LPA and a general meeting in s. 65 of the LPA; choosing instead to rely on the general heading which reads 'General Meeting of the Malaysian Bar' and ignoring the marginal note.

There is no doubt that going by current case law, the modern approach is to accept marginal notes as an aid to statutory interpretation when, previously, it was a taboo to do so. This is clearly shown in the case of *Chai Siew Yin v. Leong Wee Shing* [2004] 1 CLJ 752 where Gopal Sri Ram J in the Court of Appeal announced that:

> we can use it to interpret the section ... it is true that at one time it was taboo to use a marginal note as an aid when interpreting a statutory provision. If you look at the old cases; even those decided in the 1960's; you will see a refusal by judges to rely on the marginal note as an aid to interpretation ... But the modem approach is far more liberal. It is exemplified by what Augustine Paul JC said in *Ganesan a/l Singaram v. Setiausaha Suruhanjaya Pasukan Polis & 3 Ors* [1998] 1 AMR 126; [1998] 1 MLJ 240 which I consider to be the correct statement of the law:
>
> > A marginal note to a section is part of the statute. It may be considered in construing the section or any other provision of the statue, provided due account is taken of the fact that its function is merely to serve as a brief guide to the contents of the section ...

Further guide on the use of marginal note as an assistance to statutory interpretation is found in the statement by Lord Upjohn in *Stephens v. Cuckfield Rural District Council* [1960] 2 QB 373:

> While the marginal note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of its general purpose and the mischief at which it is aimed with the note in mind.

Though marginal note can be used as a guide but one must not forget that it is only a sub-signpost in the LPA. There is a main sign in the form of a general heading. Similar to marginal note, this general heading, which is the overall signpost, can also be called on to assist in the interpretation of a statute. The general heading has these words printed: "General meeting of the Malaysian Bar". The words "General meeting" here must be considered to mean both annual general meeting and general meeting since these two types of meeting are described under ss. 64 to 67 LPA where these provisions are encapsulate under this general heading. Except where there is an explicit declaration to exempt its use to annual general meeting with the phrase "other than annual general meeting", as can be seen in ss. 65 and 66 LPA, then the term general meeting used under all sections of the general heading must include both annual general meeting and general meeting.

One may argue against this by highlighting s. 65(2) and 65(4) LPA where the words "general meeting" is used without the qualification ("other than general meeting") and yet such meeting is definitely of a general meeting nature. This argument in my view can easily be counteracted by looking at the contents of s. 65 LPA itself where, at the outset, under s. 65(1) LPA the type and nature of meeting under consideration thereafter is that of a general meeting. There is, thus, no necessity for such similar qualification repeated in s. 65(2) and (4) LPA to indicate once again that the general meeting so stated is that of a general meeting nature. This is unlike s. 67(1) LPA. There the words "general meeting" has no qualification. And with the use of the general heading and the marginal notes as guides, the interpretation of "general meeting" here must include both annual general meeting and general meeting.

2nd Ground: What Would Be The Number To Make A Quorum

The next issue is: If no quorum is to be fixed for an annual general meeting then what would be the number of members present to constitute such meeting?

The stand taken of the applicant is "whoever are present at the AGM of the Malaysian Bar constitute the quorum". When pressed further for clarification by this court as to what number would constitute a minimum quorum, the reply was "two persons would constitute a meeting". This, to my mind goes against the very intention and objective of Parliament to prevent a small number of members of the Bar to call for a general meeting of the Malaysian Bar and pass any resolution without the participation of a larger group as was experienced by the events that led to the 1978 amendment to s. 67 LPA.

As pointed out by the learned trial judge, if the proposition of the applicant is accepted, then a motion or a proposed resolution could be carried or passed (without the one-fifth quorum required) when tabled or brought at an annual general meeting whilst such motion or proposed resolution fails in a general meeting if the quorum of one-fifth is not achieved. In fact going by this concept of the appellant, theoretically all you need is just two members of the Malaysian Bar present at an annual general meeting to pass a member's resolution. This is possible since any member can table a resolution at an annual general meeting by serving upon the Secretary of the Malaysian Bar notice of such motion in writing under s. 65(5) LPA. And in the past, records have revealed that numerous contentious and explosive resolutions were tabled at annual general meetings.

3rd Ground: Agenda In An Annual General Meeting

The appellant has attempted to impress upon this court that annual general meeting of the Malaysian Bar is a mere formality since the election of office bearers for the new term, which is often a hot topic in the agenda for such meeting, has already taken place by way of postal votes prior to the annual general meeting as provided under the LPA. But, to me, this is an understatement. There is still the two mandatory statutory items to be tabled: (a) report of the Bar Council for that term and; (b) accounts for the term. When tabled they would be debated upon and either passed or rejected. In many meetings of corporations, such items in the agenda are often subjected to intense scrutiny and heated debate, particularly the latter. Fiery questions are often asked and many committee members are brought to books if no satisfactory answers are provided. And to allow such significant matters to be passed by a mere minimum of two is, to my mind, not the intention of Parliament.

4th Ground: Comparison With Provision For State Bar Meetings

The appellant has complained that the learned trial judge has failed to draw a conclusion that since there is no provision similar to that of a quorum requirement (of one-third members of the State Bar present at annual general meeting of State Bar as found in s. 70(2) LPA) then it must be implied that Parliament intended to waive a quorum requirement for an annual general meeting of the Malaysian Bar. I do not think that this is a fair observation. From the grounds of judgment it is obvious that the learned judge has rejected this proposition when he ruled that the term general meeting applies equally to annual general meeting, requiring the quorum one-fifth of the total members of the Malaysian Bar present. This provision is already catered for in s. 67(1) LPA which, as affirmed earlier, applies to annual general meeting by the application of the words 'general meeting'.

5th Ground: Purposive Approach

The appellant has also charged the learned trial judge for failing to adopt a purposive approach in analyzing LPA, specifically s. 64. On this, the appellant quoted the following passage of Lord Griffiths in *Pepper v. Hart* [1993] AC 593 which is adopted by our Federal Court in *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 272:

> The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature. If the language proves to be ambiguous I see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which legislation was enacted.

When the once forbidden document of the Hansard that contains the Parliamentary debates was examined by me, particularly that of 13 January 1978, which recorded the debate in the Senate on the proposed amendment to s. 67(1) LPA demanding a one-fifth quorum, I discovered that there was direct reference of this to annual general meeting of the Malaysian Bar. Senator Kamarul Ariffin speaking in the Senate highlighted to the then Minister of Law that the Malaysian Bar may face difficulties in securing such number of its members to attend an Annual General Meeting of the Malaysian Bar. In response, the then Honourable Minister of Law retorted that if members of the Malaysian Bar care and value the integrity of their organization, they must ensure attendance at such annual meeting out of a sense of duty and concern. For this, the one-fifth quorum requirement should be maintained for such meeting. This disclosure is sufficient to defeat the argument of the appellant that if a purposive approach was adopted by the trial judge, the intention of Parliament is to exclude the one-fifth quorum requirement.

6th Ground: Comparison With Singapore Legal Profession Act

The appellant has brought to the attention of this court a number of similar provisions covering meetings in the Singapore Legal Profession Act 1967. According to appellant's counsel, Malaysia borrowed these provisions from the Singapore Legal Profession Act 1967 and incorporated most of them in verbatim. And in the Singapore Legal Profession Act 1967, there is no quorum requirement for an annual general meeting.

I took pains to examine in detail the Singapore Legal Profession Act 1967. Though our ss. 64, 65 (to a certain extent) and 66 LPA are similarly worded as the Singapore Act but when it comes to the quorum provision, material differences exist. There, it is governed by the Singapore Law Society bye-laws with a built in requirement that says: "shall not provide for a quorum at a General Meeting other than the Annual General Meeting of less than 50 practitioner members personally present". Our s. 67 LPA is completely different. Though it is said that there is never a quorum requirement in the Singapore Law Society for its annual general meeting but this proposition has

never been challenged. It has not stood the test, as yet. Unlike its counterpart in Malaysia, this issue is now before the courts for interpretation. For these, I am of the view that the Singapore scenario is a poor example.

7th Ground: Previous Practice

Turning against the argument of the respondent that the Bar Council has for the past years accepted the practice of a one-fifth quorum requirement for a properly constituted annual general meeting, the appellant highlighted the predicament of the Malaysian Bar that if such quorum requirement is not attained, there would be no Bar Council consisting of incoming elected members to carry out statutory duties demanded of the Bar Council. In other words, this requirement of one-fifth quorum would estop a statutory body, such as the Bar Council, from carrying out its statutory duties. These include: (a) the issuance of Annual Practicing Certificate to members of the Malaysian Bar; (b) the representation by the President of the Malaysian Bar to the Disciplinary Board; and (c) the representation of the President of the Malaysian Bar to the Qualifying Board that examines eligible candidates to qualify for the Malaysian Bar. To support this argument, the Federal Court case of *Public Textiles Berhad v. Lembaga Letrik Negara* [1976] 2 MLJ 58 was cited.

There is no necessity to delve in depth into this issue. As pointed out by Encik Zainur Zakaria, counsel for the respondent, the appellant has "completely missed the point". The respondent, and I agree, is not raising estoppel to prevent the Malaysian Bar from performing its statutory duties. On the contrary, the respondent is seeking an order to compel the Bar Council to call for a legally constituted annual general meeting so that the in-coming office bearers could proceed to carry out the statutory duties of the Bar Council.

The appellant has approached this matter by highlighting the predicaments of the Malaysian Bar: if a liberal and wide interpretation is not pronounced, then there would be a standstill in the Malaysian Bar, with grave consequences. I am not attracted by this downcast prediction. All that the law requires, from my point of view, is for the Bar Council to call for a legally constituted annual general meeting. For this, a quorum of one-fifth of the members of the Malaysian Bar present at such meeting is required under s. 67(1) LPA. If such a quorum were not achieved then the meeting would stand adjourned. This, as facts disclosed, is virtually a perennial encounter. But the law requires such number of members to attend such meeting and it must be impressed upon them that if they fail to do so then the consequences are grave. Adding to this, I would reiterate what the Honourable Minister of Law said in Parliament in 1978, that members of the Bar should have pride in their

profession and should attend such meeting out of concern and care for the body they belong. If at all there is a need to amend the law, as all parties to this suit knows, the court is not the forum to undertake such task; the August body of Parliament is.

8th Ground: Justice Brinsden's Proposition

Finally, based on the grounds as discussed, I find that Justice Brinsden's proposition in *Harman v. Energy Research Group Australia Ltd; Davidson v. Energy Research Group Australia Ltd* [1985] 3 ACLR 538 of there being:

> no magic in the use of the word "general". If all the members meet, it seems to me that the meeting must be a General Meeting or an Annual General Meeting.

though is spoken in the context of company law equally and adaptly applies to the circumstances of this case that concerns meetings under s. 64 to 65 LPA.

Conclusion

For reasons above, I am of the opinion that this appeal should be dismissed.